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Jus Meritum:
Alien Military Service and Naturalization in the United States

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Jus Meritum:
Alien Military Service and Naturalization in the United States

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For my parents.

Jus Meritum:
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This dissertation draws on theories of citizenship and civil-military relations, historical policy analysis, and contemporary polling data to argue that the principle of *jus meritum* or citizenship for military service is a long-standing route to political incorporation. While it does not have the formal status of the two traditional legal principles, *jus sanguinis* (parentage) and *jus soli* (place of birth), *jus meritum* operates as a foundational principle for inclusion in the United States. The logic of *jus meritum* asserts itself most forcefully during wartime, when the state is in critical need of resources. The traditional principles of political membership based on parentage and place of birth are insufficient guides to understanding the historical development of American citizenship. Scholars of immigration and civil-military relations, too, only deal with the practice of alien enlistment and naturalization tangentially. Drawing on these related literatures, I argue that *jus meritum* is a foundational citizenship policy deserving of greater scholarly attention. Persons willing to serve in the national interest during these critical moments later pushed the boundaries of political inclusion and transformed the institution of citizenship. Contemporary public polling data that confirm this principle, although latent, has strong support. A fuller understanding of historical record may also help current policymakers craft a set of immigration reform proposals consonant with American political ideals and identity.

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Chapter One

Introduction

From the Revolution to the present-day armed conflicts, the foreign-born have served in America's militaries and have made a substantial contribution to every major war. Although the standard narrative of political and social development in the United States assigns military service a leading role in integrating marginalized groups into society, little has been written about how military service leads to citizenship. Much of the literature focuses on two traditional principles for assigning citizenship, *jus sanguinis* and *jus soli*, by virtue of parentage or location of birth. Although US citizenship is most likely to be gained through one of these two means, the American "citizen-soldier" tradition has also enabled a significant number of individuals to gain citizenship by performing military service. To elucidate this underexamined naturalization route, this dissertation argues that the path to citizenship through military service is a stable, durable feature of American identity and political life. The similarities among military naturalization statutes across periods of American history suggest that the commitment to awarding citizenship to those willing to serve and sacrifice on behalf of the nation transcends the varied ideological commitments of political coalitions concerned with restricting immigration and immigrants' rights. Explicating the path to citizenship

through military service, *jus meritum*, gives a fuller picture of the mutual imbrications among American political development, immigration politics, and civil-military relations.

According to the principle of *jus meritum*, the natural right of membership is derived by merit gained from service for, contributions to, and the willingness to sacrifice for the state. The standard typology of claims to American citizenship characterizes *jus meritum* as, at best, an exception to the rule (Brubaker 1992; Schuck and Smith 1985; Smith 1997). Taking a different approach, this study conceptualizes the practice—historically and in the contemporary period—as an essential element of American identity and community. Rather than classifying it as epiphenomenal to the military needs of the state, this study concludes that *jus meritum* is best understood as a permanent and enduring means of gaining American citizenship. To this end, this dissertation provides the first systematic treatment of the forms of *jus meritum* enshrined in statute, case law, and policy history, as well as offering an analytical framework for understanding the practice of admitting aliens into the political community on the basis of individual contributions to the state.

Military service has shaped the institution of American citizenship in underacknowledged ways. One cannot understand the development of citizenship and the criteria for inclusion in American political life without reference to the principle of *jus meritum*. With alien soldiers only comprising about 5 percent of today's active duty military force, their contribution would appear to be merely symbolic.[1] However, the

[1] I use "noncitizen" and "alien" interchangeably throughout the dissertation. Alien is the term found in immigration and naturalization law, per the Immigration and Nationality Act, whereas noncitizen has been used by political scientists and in the field of public policy.

service of these persons—like that of other minority groups—justifies not only their recognition as full citizens but also the greater attention of American political scholars. Those who aspire to citizenship through military service follow and build upon a tradition of service to—and sacrifice for—the state. As Samuel Huntington writes, "National defense is the responsibility of all, not just a few. If war becomes necessary, the state must fight as a 'nation in arms' relying on popular militias and citizen armies" (Huntington 1957, 91). During his presidency, George W. Bush called military service "the highest form of citizenship" (Bush 2001). In the spirit of this tradition, minorities have effectively used their military service as "proof" of their allegiance to the community, persuading the majority to accept them as full citizens (Krebs 2006; Parker 2009).

The contributions of alien soldiers justifiably prompts Americans to reconsider some of the basic features of our political order, such as ideas about political membership, civic obligation, and shared sacrifice. These historical links explain why the American public overwhelmingly supports granting citizenship to those who serve, despite remaining split on immigration policy in general. Military sacrifice thus reshapes the political community's obligations to individuals and groups.

OBJECTIVES OF THE STUDY

This dissertation has two central aims. The first is to show that citizenship acquisition through military service, or *jus meritum,* is a stable feature of American identity and politics. Drawing on an array of historical sources, policy analyses of alien military enlistment and naturalization statutes, as well as contemporary polling data, this

study provides the first systematic examination of the practice of *jus meritum* in the United States.[2] *Jus meritum* is conceptualized as a subset of naturalized citizenship. As this dissertation will demonstrate, military service is a path to citizenship that is, in theory and in practice, distinct from other ways of becoming a naturalized American citizen.

The second objective of the study is to understand how this avenue of political incorporation has functioned over time. This concept is important because military service—an historically prominent method of demonstrating allegiance to the community—is not a current method of mass political incorporation, nor does it appear likely to reemerge as one in the near future. Therefore it is particularly important to understand how the government has applied *jus meritum* in novel ways beyond the naturalization of active duty members after World War II (WWII), when a large proportion of the public served in uniform. A greater appreciation for the American public's support for *jus meritum* throughout US history can lay a foundation for policymakers to create laws consistent with long-standing public opinion, although this support may be latent in an era where less than one-half of 1 percent of American citizens serves in uniform. Because it is unlikely that the military will serve as a major site of political incorporation without mass armies, the final part of this study turns to a discussion of how the principle behind this phenomenon can be applied or revived to meet contemporary challenges.

[2] In fact, there is empirical support that beyond conceiving of *jus meritum* as an equally central claim to membership in the United States, the principle of citizenship for service should be regarded as the only primary and direct claim to inclusion. "Primary and direct" means that, unlike *jus soli* and *jus sanguinis*, *jus meritum* is not a derivative claim for membership. The distinction between accidental and intentional citizenship is meant to underscore this point.

IMPORTANCE OF THE STUDY

Understanding the path to citizenship through military service has important implications for American politics in general. The principle of j*us sanguinis*, codified by Congress in the 1790s, and *jus soli*, enshrined in the Fourteenth Amendment to the Constitution, have been affirmed by the courts in the United States. For this reason, debates about the contours of citizenship and belonging often invoke one of these two traditional principles for determining membership. For example, although *jus soli* was briefly debated in the 1980s regarding whether Congress had the authority to restrict the bestowal of automatic citizenship on children born in the United States to those with at least one citizen parent, the public affirmed *jus soli* as the appropriate standard (Schuck and Smith 1985). Moreover, even as some controversy has arisen more recently regarding President Barack Obama's status as a native-born citizen (i.e., the "birther" movement), critics noted that because there was no question of his mother's nationality, there was no question of his native-born status regardless of his place of birth (an application of the *jus sanguinis* principle). A similar question regarding Senator John McCain's status as a native-born American (he was born in the Panama Canal Zone to two citizen parents) was raised and resolved publicly during his 2000 presidential campaign. These examples demonstrate that contemporary debates about political inclusion refer back to these two traditional of principles for inclusion based on parentage and place of birth.

Studying the practice of offering citizenship for military service also contributes to the literature on political incorporation. Military service—a symbolic, highly visible, and recognized contribution to the community—is perhaps the most direct route to

political inclusion (Krebs 2006; Lamm 2010). By way of example, military service played a critical role in the expansion of suffrage in the early 19th century, the development of social policy (Skocpol 1992), and the political recognition of previously marginalized groups (Klinkner and Smith 1999; Parker 2009; Ural 2010).[3] Reframing the citizen-soldier tradition as the observable implications of public support for *jus meritum* thus warrants a reexamination of the military's role as a political institution. In fact, the entire body of literature linking military service and political membership, e.g. including the citizen-soldier in the United States, is a testament to the practice of this principle throughout American history.

This study makes a unique contribution to theories of citizenship and nationality by incorporating civil-military relations scholarship on alien military service and naturalization. In these pages, the military is conceptualized as one of the earliest and most durable political institutions: a "nation builder" that socializes new immigrant and previously marginalized groups into the political community (Krebs 2006; Riesenberg 1992; Samito 2009; Smith 1981). As such, the policy history of *jus meritum* factors into the dialectical relationship between the state's military needs and the criteria for political inclusion that has previously been examined in general terms (Krebs 2006), and specific periods of US history (Klinkner and Smith 1999; Ural 2010; Parker 2009).

After the past forty years of an all-volunteer military force, the reason why political scientists studying American politics should care about military organization

[3] Skocpol (1992) traces the origins of social policy in the United States to veterans' benefits following the Civil War.

may not be entirely clear.[4] As the generation of political scientists with direct experience of military institutions recedes, we have "to spend lots of time and energy rediscovering institutional interrelationships that once were intuitively obvious" (Ackerman 1998, 255).[5] In this vein, the study of alien military service and naturalization has important policy implications and enduring contemporary relevance. With alien soldiers constituting about 5 percent of today's military force, their material contribution is largely symbolic. The current population of alien service members among a military force of 1.4 million people stands in stark relief to the two hundred thousand foreign-born soldiers that comprised nearly one-fifth of the US Army during World War I (WWI).[6] However, as the course of twentieth-century America has shown, much is at stake in how narratives about service to—and sacrifice for—the state are defined. Therefore, it is important to understand the contours of *jus meritum* so that national leaders can imbue new institutions with the essential elements of the tradition.

Finally, examining the application of *jus meritum* highlights the way that both liberal and civic republican strands have shaped the institution of citizenship over time (Smith 1997). In particular, draft laws and enlistment regulations reflect changes in how the United States has defined membership in the community. Indeed, the stability of the principle of *jus meritum* strengthens the case that multiple traditions have contributed to

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[4] The norm of civilian control over the military has occupied the attention of scholars of international relations, as the deference to civilian authority appears to be a bedrock of professional American military culture.

[5] Ackerman (1998) is referring to another generational paradigm shift.

[6] It is important to keep in mind that the definitions of aliens and non-citizen shifted during this period. For example while Jacobs and Hayes (1981) estimate that 9 percent of WWI military personnel were aliens, their tally does not include Puerto Ricans, Filipinos, and Native Americans (Jacobs and Hayes 1981, 193).

the institution of American citizenship and demonstrates that *jus meritum* is a durable, essential feature of citizenship rather than an exception to the rules of access to American nationality.

CONTRIBUTIONS TO THE LITERATURE

As Schattsneider (1942) emphasized, political institutions are not neutral; making their arrangements—how they structure opportunity, what behavior they incentivize, and their political consequences—of interest to political science (Klinkner and Smith 1999; Mettler 2002, 2005; Smith 1997). Still, scholars of citizenship, nationality, and immigration have overlooked the political incorporation of aliens based on military service. Those who have taken it up as a subject draw from and build on the work of political theorists, experts in civil-military relations, and researchers on immigration and citizenship policy. The primary evidence for recognizing *jus meritum* as a citizenship policy is the citizen-soldier tradition itself. This study of military naturalization contributes to the literature on the role of military service in state- and citizen-building, presenting the historical substantiation for conceptualizing *jus meritum* as a regular, fixed part of the naturalization regime.

Theories of Citizenship and Citizenship Policy

This study contributes to the literature on citizenship and nationality by elaborating a path to US citizenship through military service. While accounts of naturalized citizenship appear in the literature on immigration and naturalization, *jus meritum* is virtually absent from this body of work. Even though the vast majority of US citizens have acquired—or will acquire—citizenship at birth, the issues surrounding

persons incorporated as adults warrant more scholarly attention. In what follows, I lay out the basic problem with the traditional model of citizenship, discuss how scholars have attempted to "fit" the lived experience of immigrants into this model, and propose an alternative way of thinking about the principles that have shaped the institution of American citizenship over time.

Political scientists have traditionally contrasted two ways of assigning membership in modern, liberal democracies including the United States (Brubaker 1992). In his seminal work, Rogers Brubaker (1992) describes two "styles" for assigning citizenship in Western democracies: the principle of *jus sanguinis*, or right of blood, associated with the German model, in contrast to *jus soli*, or right of soil, associated with how French citizenship is assigned. Brubaker's work is seminal because it is the first attempt to develop a theory of nationality and naturalization (Janoski 2010, 4). Other scholars of citizenship and nationality also posit that *jus soli* and *jus sanguinis* are the principal means for determining membership in modern, liberal democratic nations (Brubaker 1989, 1992). But even as most scholars of citizenship take Brubaker's binary model for granted, they—as well as Brubaker himself—acknowledge that states by necessity blend some elements of *jus sanguinis* and *jus soli* principles (Brubaker 1992; Cohen 2010, 2011; Wong and Cho 2006; Wong 2007).

In contrast to *jus sanguinis* and *jus soli*, however *jus meritum* is a policy that applies to naturalized citizens or those who were not recognized as US citizens at birth. For scholars of American politics, the distinction between citizenship and immigration policy is sometimes difficult to conceptualize because the United States is a "nation of

immigrants." Given the relatively "open" naturalization regime in the United States, immigration policy is synonymous with is citizenship policy (Freeman 1995; Janoski 2010). In restrictive regimes, i.e. the German model, "naturalization is anomalous and infrequent, a privilege bestowed by the state on certain deserving individuals" (Brubaker 1992, 33). The United States lies "at the other pole…[,] in this system naturalization is expected of immigrants; the failure to naturalize is anomalous. Naturalization is actively promoted by the state" (Brubraker 1992, 33). The open and unrestrictive naturalization regime in the United States may be one reason that studies of nationality and citizenship have been subsumed by theories regarding immigration patterns (how many and from where) and immigrant rights (how persons are treated after their arrival).

While the distinction between parentage and place of birth succinctly summarizes the paths to native-born citizenship, it does not explain when, why, and how persons are naturalized in modern, democratic states. This study contributes to literature on immigration and citizenship by examining and classifying the ways aliens have acquired US citizenship through national service. As such, this study goes beyond an exploration of the conventional, static model for determining political membership to more accurately accommodate the dynamic nature of citizenship in immigrant-based nations—or what Louis Hartz calls "settler nations"—such as Canada, the United States, and Australia (Hartz 1955; Krebs 2006).

Chapter two, the policy history of *jus meritum*, demonstrates how the federal government adopts more inclusive immigration and naturalization policies to meet its manpower needs in times of war but returns to more exclusive practices once the crisis

has passed (Krebs 2006). While scholars of American political development after WWII have explored this specific action-reaction trend (Klinkner and Smith 1999), the present study examines the practice of alien military incorporation throughout US history. Although the route to naturalization through military service is a known quantity, evidence for a direct, causal relationship between military service and citizenship remains lacking.[7]

This study of alien military naturalization also takes into consideration the significance of alien military service in terms of liberal and democratic theory in the United States. Historically, this service includes a willingness to participate in the state's defense. *Jus meritum* is particularly salient in the United States because, in contrast to the Europe, American traditions are based on a commitment to a set of ideals, which include individual rights, political equality, and the merit system (Huntington 1981).[8] Unlike European concepts like *jus soli* and *jus sanguinis* that devolve to an accident of birth, *jus meritum* contains both the liberal and civic republican elements of American political life (Lamm 2010). Its liberal elements include the recognition of individual conscience, consent, and freedom of association. Its civic republican features comprise a commitment to self-determination, distinction based on individual merit, and sacrifice for the common good. These features make *jus meritum* a fertile site for exploring how citizenship has been conceptualized and practiced over the course of American history.

[7] For example, blacks served in every American army but were only admitted to citizenship (practically speaking) in the mid-1960s. In the same vein, Native Americans were classified as "foreign-born" until the 1920s. These examples alone cast doubt on the veracity of the citizen-soldier tradition as it is conventionally understood.

[8] In fact, *jus meritum* may be the only principle for determining community membership that does not violate some foundational aspect of American political identity.

Theories of Immigration and Immigrant Policy

This study provides the first systematic examination of the practice of alien military service and naturalization in the United States. Those who acquire citizenship through national service are a distinct group. Historical and civil-military relations literature have documented the experiences of this group as integral elements of the citizen-soldier tradition. This practice may stimulate other programs to link the aspirations of undocumented aliens to national goals and priorities. As some scholarship indicates, citizenship "earned" by military service may be more politically acceptable than a blanket amnesty program (Jacobs and Hayes 1981, 201). At a naturalization ceremony for military service members in 2006, President George W. Bush crystallized the logic of the arrangement by stating, "If somebody is willing to risk their lives for our country, they ought to be full participants in our country" (Bush 2006). Despite such high-profile attention, the practice of awarding citizenship in exchange for military service has not been subject to comprehensive study by political scientists and is virtually absent from the dominant theories of citizenship and belonging.

Veteran status does not guarantee equal social status or equal protection under the law; rather, both individual veterans and veterans' groups have effectively leveraged the rhetorical power of service and sacrifice to win political and social rights. For example, the policy history chapter trains a lens on the particular case of Asian veterans of WWI, whom the Supreme Court deemed ineligible for citizenship on racial/ethnic grounds in 1925. Ten years later, and with much public lobbying by veterans' organizations, Congress made Asian veterans of WWI eligible for naturalization decades before

restrictive racial and ethnic quotas were removed from the US immigration and naturalization code. Remarkably, this case highlights how "anti-immigrant" groups, such as the American Legion and Veterans of Foreign Wars, have found themselves allied with "pro-immigrant" forces, suggesting that the *jus meritum* principle is independent of historically and culturally conditioned viewpoints.

This study also contributes to comparative work on theories of immigration and immigrant policy. While the study of naturalized citizenship in the United States is of enduring import for immigrant nations, it is also of increasing interest for countries like France and Germany that are currently grappling to accommodate immigrant claims to inclusion. The study of naturalized citizenship in the United States may also have implications for comparative theories of nationality law. Moreover, this study has meaningful policy implications given that these intentional paths to inclusion—although only used by a small proportion of those who acquire citizenship—have become the focus of intense, current debate over immigration policy and immigrants' rights in the United States.

Theories of Civil-Military Relations

While a great deal has been written about the citizen-soldier tradition, the extant literature has rarely been brought into direct dialogue since the end of mass armies and the introduction of the all-volunteer force in 1973. However, the principle of "citizenship for service" has been enacted in immigration and naturalization laws throughout US history. Janowitz (1976) observes "from World War I onward military service has been… a device by which excluded segments of society could achieve political legitimacy and

rights" (Janowitz 1976, 191). It is well known that aliens have served in the military during past conflicts; however, with the advent of the all-volunteer force, how and why the practice continues today has not been fully explored. Writing in 1981, Jacobs and Hayes observed, "The United States military has been a relatively 'open' institution with respect to immigrants and has contributed to their assimilation into American society" (Jacobs and Hayes 1981, 200). As the public and scholarly communities consider another revision of the nation's immigration code a new study of alien military service and naturalization is timely.

An entire sub-field within the civil-military relations literature concerns the consequences of decoupling citizenship and military service (Burk 2001; Janowitz 1976; Moskos 2003). Heater (1999) argues that the contemporary scholarly interest in civic republicanism can be traced to the disintegration of mass armies. While concern over what Elliot Cohen calls "the twilight of the citizen-soldier" and the erosion of civic virtue amount to a perennial republican critique of American liberalism, it is true that in the contemporary period national service is no longer synonymous with military service (Cohen 2001; Sackett and Mavor 2003). Analysis of longitudinal data of youth perceptions show that, beginning in the mid-1990s, young adults viewed civilian careers as just as likely—or more likely—to "do something important for the country" as military careers (Sackett and Mavor 2003, 214-5). If the military no longer functions as a mechanism of mass incorporation or "school for the nation," and if young people no longer view military service as the primary route to making an important contribution to the nation, then leaders must ensure that other organizations and institutions are serving

this vital sense of purpose (Janowitz 1976; Krebs 2006). Given America's changing demographic profile brought on by new immigrant groups, and the natural population growth estimates among these groups, knowing whether our political institutions—including the military—are still capable of performing their nation-building role is a vital line of inquiry.[9]

The next section discusses why the military is best conceptualized as a political institution and how military service is rhetorically tied to citizenship in the United States. Last, it lays out the plan for the dissertation.

THE MILITARY AS A POLITICAL INSTITUTION

Political theorists have long been interested in the relationship between the method of building armies—such as universal service and conscription—and regime type (from republics to constitutional monarchies), examining whether certain models of service are more or less compatible with certain political principles of organization (Cohen 1985; Feaver and Kohn 2001; Huntington 1957; Janowitz 1976; Krebs 2006). For nearly all of Western political history, scholars have theorized a link between the democratic principle of equality and the principle of responsibility for the common defense (Chambers 1987; Cress 1982; Riesenberg 1992). In early Greek democracies—as described by Thucydides and others—citizens were soldiers and soldiers were citizens. Alien enlistment, through conscription or an all-volunteer model, exposes the tension between tenets of liberalism, democratic theory, and the various conceptions of

[9] Krebs (2009) argues that the citizen-soldier tradition still performs this function rhetorically, making the disintegration of mass armies politically irrelevant.

citizenship that have all been embraced as part of the American creed. Indeed, this country's founding figures held radical and democratic principles (Adams 1980; Carter 1998; Cress 1982) about the rights of the individual, the proper limits of government, and the relationship between the two. *Jus meritum* exhibits many of these foundational American values.

The presence of a civic republican tradition in the United States reinforces the military's role as a political institution and "bridging environment" for the incorporation or recognition of new immigrant and politically marginalized groups. The military is a political institution *par excellence*, linking ordinary people to the state and serving as one of the most important sites of incorporation and assimilation of new groups. The military is one of the earliest and most durable institutions—a "nation builder" that socializes new immigrant and previously marginalized groups into the political community (Krebs 2006; Riesenberg 1992; Samito 2009; Smith 1981). The military is also a national symbol; it serves as a "repository of mythical constructions of the past" (Krebs 2006, 17). Like other nations, the United States has a long history of extending citizenship and other benefits to newcomers in exchange for service to the nation, especially during wartime (Janowitz 1976; Lamm 2010; Plascencia 2009; Smith 1997; Tichenor 2002).

War is part of nation building, as reflected by the role that the citizen-soldier plays in political and social narratives in the United States (Hedges 2002; Linderman 1999; Smith 1981). The dominant narrative posits that military service—a symbolic, highly visible, and easily understood contribution to the community—is perhaps the most direct route to political inclusion. Americans describe military service as a means for

non-dominant groups to "earn" status as full members of the political community, "proving their allegiance" to the nation through sacrifice (Krebs 2006; Samito 2009). A great deal of scholarship documents the empirical link between the military service of marginalized groups and their successful efforts to be recognized as equal citizens. In the nineteenth century, many property-restricted suffrage laws yielded in response to the demands of property-less veterans (Adams 1980; Williamson 1960). Japanese, Native Americans, and Black Americans enlisted in the segregated Jim Crow Army during WWII in an effort to prove their allegiance to the country (Walsh 1994). Mettler (2002, 2005) has documented how Black GI Bill recipients were more likely to become politically active in the civil rights movement. More recently, feminists argued in the 1970s and 1980s that barriers to women in the service must be removed if women were to be treated as full and equal citizens (Hasday 2008). Similarly, supporters of homosexual rights applauded the 2010 repeal of the Department of Defense's "Don't Ask, Don't Tell" policy. In the early part of the 21st century, reflecting the larger demographic changes in American society, Latino and Latina Americans are enlisting in greater numbers (Asch et al. 2009; Dempsey and Shapiro 2009). The entire corpus of citizen-soldier literature is a testament to the military's success in nation building and the political efficiency of bearing arms in service to the state.

The rhetorical power of these arguments derives from universal norms concerning the balance of rights and obligations in relationships among the individual, group, and state. Several scholars have explored the mechanisms of this phenomenon in the twentieth century (Mettler 2002; Parker 2009; Plascencia 2009; Samito 2009),

demonstrating how military service generates claims to political and social inclusion. Service to and sacrifice for the nation transforms the individual, who forms and joins the campaign for political recognition. In their efforts, these claimants often appropriate the very language used by the state to mobilize the population during war (Krebs 2006; Parker 2009). Doing so forces political elites who are not otherwise interested in more inclusive policies to either acknowledge their service or not—thereby undermining the state's credibility in calling for shared sacrifice, identity, and fate when the next crisis occurs. In this sense, war serves as a "focusing event" (Pierson 1993), highlighting the service of these individuals and reminding Americans of the most fundamental of their commonly held values (Kriner and Shen 2010). Politically and socially excluded groups have won rights and recognition by successfully juxtaposing their second-class status to their record of military service through a process Krebs (2006) calls "rhetorical coercion" (Krebs 2006, 13).

THE INSTITUTION OF CITIZENSHIP IN THE UNITED STATES

Military service has shaped the institution of citizenship in the United States. Historically, military institutions played a major role in the expansion of suffrage, such as the removal of property requirements in the early 19th century (Krebs 2006; Williamson 1960), the development of social welfare policy in the late 19th century (Skocpol 1992), and the integration of new immigrant and other marginalized groups into society throughout American history (Mettler 2002, 2005; Moskos and Butler 1996; Parker 2009). On this subject, other scholars document how the liberalizing benefits of policies designed to meet the government's immediate needs emerged years, some decades after a

crisis passed. For example Irish American volunteers of the Civil War used their service to prove their allegiance to the US, eventually recasting Catholicism as compatible with American citizenship (Samito 2011). Similarly African Americans were able to knock down racial and ethnic barriers to national citizenship (Mershon and Schlossman 1998; Moore 1996; Morehouse 2000). In the 20th century, Suzanne Mettler (2002, 2005) documents how the experience of black veterans under the GI Bill furthered the civil rights movement of the 1950s and 1960s. In these cases and others, military service played a role in shaping the institution of citizenship in the US by providing a path for marginalized groups to secure the same social and economic benefits as their citizen peers (Klinkner and Smith 1999; Krebs 2006; Mettler 2005; Parker 2009; Plascencia 2009).

The link between citizenship and military service is most obvious in the similarities between the Oath of Naturalization (or, of Renunciation and Allegiance) and military oaths of enlistment. The next section examines the similarities between the oaths of citizenship and military enlistment. Unlike military oaths of enlistment which were codified by Congress (the first by the Continental Congress in 1776), the United States did not even have a standardized oath of allegiance or naturalization until one was promulgated by the Immigration and Naturalization Service (INS) in 1929. It is significant that this Executive agency, the INS, turned to the language of military oaths when drafting an Oath of US citizenship. The 1929 Oath of Naturalization, the final step in becoming a naturalized American citizen, is still in use today. It reads:

United States Oath of Citizenship (or, of Renunciation and Allegiance):

I hereby declare**,** on oath / or solemnly affirm**,**
that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen; [1]
that I will support and defend the Constitution and laws of the United States of America [2] against all enemies, foreign and domestic; [3]
that I will bear true faith and allegiance to the same; [4]
that I will bear arms on behalf of the United States when required by the law; [5]
that I will perform noncombatant service in the armed forces of the United States when required by the law; [6]
that I will perform work of national importance under civilian direction when required by the law; [7]
and that I take this obligation freely without any mental reservation or purpose of evasion**;** so help me God**.** [8]

I have numbered each clause (in brackets to the right) to make clear the below analysis. The core of the US Oath of Naturalization is borrowed from Military Enlistment Oaths. A history of the military enlistment oaths, as well as the text of each, appears in Appendix A. Generally speaking, Congress codified a new military oath during or after every major

war in accordance with its constitutional responsibility "to make rules of the government and regulation of the land and naval forces".

Clause 1 of the Citizenship Oath, rejection of previous political allegiance, appears in the 1776 oath for military officers.[10] In 1789 Congress passed a new military oath for officers and enlisted men that begins "that I will support the constitution of the United States," clause 2 of the 1929 Citizenship Oath. Clause 3 of the Citizenship Oath, "against all enemies foreign and domestic" first appeared in an 1862 military oath for officers of the Union. Clause 4 of the Citizenship Oath, "that I will bear true faith and allegiance to the same," first appears in the 1830 oath of military enlistment. Clauses 5, 6, and 7 of the Citizenship Oath are the only ones not borrowed from a military oath and concern the military obligations of citizens and civilian alternatives to military service during wartime. Finally, clause 8 of the Citizenship Oath, "and that I take this obligation freely without mental reservation or purpose of evasion" are borrowed from the 1862 military oath.

It is clear that when drafting a uniform oath of US Citizenship in 1929, the federal agency charged with this responsibility borrowed heavily from military oaths of enlistment. The Immigration and Naturalization Service (INS) agents may have appropriated is language because each military oath was passed by Congress and affirmed by the President. It may well have been simply expedient for INS agents to use pre-approved text. Textual and historical analysis of the Naturalization Oath further

[10] See Appendix A for the history and evolution of the military oaths. Not surprisingly, the 1776 oath for officers in the Continental Army (and civilian office holders), specifically rejects political allegiance to "said King, George the third, and his heirs and successors, and his and their abettors, assistants, and adherents" (Continental Congress 1776).

supports the argument that military service and citizenship are linked. More research is needed to confirm that the drafters of the Naturalization (citizenship) Oath knowingly and intentionally borrowed from military oaths.[11] At a minimum, the similarities between the Naturalization and Military Oaths provides evidence of a rhetorical link between individual allegiance to the political community and military service.

PLAN OF THE DISSERTATION

Chapter Two presents the historical evidence for conceptualizing *jus meritum* as a permanent feature of the naturalization regime in the United States. It examines the legal and policy history of alien military naturalization—that is, aliens that acquire citizenship through enlistment in the armed forces of the United States. This chapter analyzes enlistment regulations, draft laws, citizenship laws, and relevant judicial rulings regarding alien military service and naturalization. Following Smith (1997) and others, these data are a rich source of information for assessing the politics of membership, as well as the delineations of civic obligation in American society. Over time, the US government liberalized the immigration and naturalization regime to encourage enlistment as a national strategy for mobilization during wartime. When the crisis passed, a postwar struggle to accommodate new claimants began (Krebs 2006).

As Chapter Two discusses, the military has long served as an institution or mechanism of political incorporation. The practice of alien enlistment in the armed forces of the United States predates the country's founding and has since been regarded as a way for new or previously marginalized groups to prove their allegiance to the nation.

[11] Archival research might confirm that this is what the drafters had in mind.

Revealingly, the Civil War provisions for military naturalization are more similar to those for the First and Second World Wars and the post-9/11 period than they are to the immigration and citizenship policies of the mid-nineteenth century.

Chapter Three turns to the politics of citizenship for service in the contemporary, post-9/11 period. The first part of the chapter summarizes the changes to the military enlistment and naturalization code in response to security imperatives of the post-9/11 era. Numerous major changes are observed. First, in line with what is observed in earlier periods of armed conflict, the federal government relaxed enlistment regulations to attract immigrants to serve in the wars in Afghanistan and Iraq. Congress and the president provided for the naturalization of service members that served after 9/11 regardless of previous residency and properly admitted requirements. Additionally, the Department of Defense introduced the Military Ascensions Vital to the National Interest (MAVNI) program in 2008 that enlisted aliens with special language and medical skills although these persons are not statutorily authorized to serve in the "peacetime" volunteer force.

The second part of Chapter Three examines the post-9/11 policy changes to the immigration and naturalization regime that depart from what was observed in earlier periods of armed conflict. This section discusses the practice of awarding posthumous citizenship to aliens killed in action and the extension of residency and citizenship benefits to the surviving family members of these soldiers. The conception of revocable citizenship is introduced to discuss the conditions placed on service members who acquire citizenship through military service after 2004. The post-2004 citizenship granted for military service is problematic and deserves greater scholarly attention.

Finally, Chapter Three discusses the place of alien military families and veterans under immigration law in the post-9/11 period. Particularly revealing is how the government has cared for the surviving spouses and children of those killed or injured in war. The practice of awarding posthumous citizenship to aliens killed in combat does represent an official effort by the state to meet its obligation to the families of the fallen (although exactly what that obligation is remains unspecified). The military services have renewed efforts to make all service members citizens; however, there remains a population of alien veterans in the United States. Although Presidents Bush and Obama have taken steps to shield alien veterans and their family members from deportation, such executive measures are temporary. Congressional action is needed to resolve the status of many alien veterans, military family members not legally in the United States.

Chapter Four moves from historical, theoretical, and policy analysis to contemporary empirical analysis of how the contemporary public views *jus meritum*. This is particularly relevant for the current debate over the appropriate direction and scope of immigration policy reform. Specifically, this chapter analyzes original polling data on the DREAM Act, a proposal to allow undocumented persons brought to the United States before the age of 16 to become legal residents if they graduate from high school, remain free of legal trouble, and go to college or join the military. All previous public polling on the DREAM Act is limited in that it asked respondents about support for a proposal to allow persons brought to the US as minors a path to citizenship if they joined the military or went to college. While it is reasonable to assume that there is more public support for the military than the college provision, there was no data to support this hypothesis.

At the request of the author the May 2011 Texas Politics Survey, for the first time, asked respondents about the military and college provisions *separately*. Unsurprisingly, 59 percent of respondents supported the military provision (37 percent opposed) whereas only 36 percent supported (59 percent opposed) the college provision. The public's greater support for the military compared to the college provision of the DREAM Act supports the argument the argument that *jus meritum* is a longstanding feature of US citizenship policy. It is beyond the reach of this poll's design and data to discern whether this support stems from knowledge of the history of the practice discussed in chapter 3, the citizen-soldier tradition generally, the rhetorical import of military service, or some combination of these. The statistical analysis of the May 2011 Texas Politics Survey data does support the idea that military service is somehow exceptional in the eyes of the public.

Chapter Five considers the implications of these findings for theories of citizenship, immigration, and civil-military relations literature, arguing that the path to citizenship through military service should be more widely regarded as a durable element of the institution of citizenship in the United States. Ample historical evidence links the state's military needs to the evolution of immigration and naturalization policies. Despite its absence from the academic literature, *jus meritum* has functioned over time as a foundational claim to political membership alongside the traditional principles of *jus soli* and *jus sanguinis*.

The examination of the legal and policy changes in response to the wars in Iraq and Afghanistan are also largely consistent with the overall pattern of changes to

immigration and naturalization law that coincide with a sharp increase in the state's military needs (or at least the perception of those needs). But this finding contests the traditional Hartzian view that American political development is a progression of liberalism because it includes some arguably problematic practices such as posthumous and revocable citizenship discussed in chapter 3 (Hartz 1955).[12]

Last, Chapter Five examines the choices faced by current policy makers. If draft laws and enlistment regulations reflect how Americans defined membership in the community during the Civil War and two World Wars, what are we to make of current Selective Service laws that require undocumented immigrants to register for the draft? This chapter specifically discusses the 2012 Executive Memo on "deferred action on childhood arrivals," and the 2014 announcement that undocumented minors are eligible for military enlistment in light of the long-standing practice of political incorporation through military service.

[12] Discussed in chapter 4, posthumous citizenship refers to the practice of naturalizing service members after their death in combat. About 110 such awards have been made to service members killed in Afghanistan and Iraq from 2011 to 2014. Revocable citizenship refers to the provision allowing the government to denaturalize persons that acquire citizenship through military service after 2008 if they do not serve "honorably" for 5 years. There is no evidence that the US government has attempted to denaturalize any ex-service member however the Congress has empowered the Department of Homeland Security to do so.

Chapter Two

Policy History of Alien Military Naturalization

This chapter discusses the history of alien military enlistment and naturalization. The general process is quite simple: political incorporation is the unintended consequence of "casting a wide net" for mobilizing resources during crisis periods (Krebs 2006; Sparrow 1996). Liberalization or loosening of the state's immigration and naturalization regime occurs during wars, and despite efforts to return to a more restrictive regime during peacetime, the performance of military service has great rhetorical power that is often converted to political gains (Lamm 2010). Every Congress has made provisions for military naturalization during or after periods of armed conflict. For much of American history, naturalization was decentralized and largely governed by the states—except for the category of military petitioners whom the popular branches of government took special care to manage at the federal level, never delegating this power to the states. Because the practice of granting citizenship for service is evident across so many periods of American political development and in every major war, the principle of *jus meritum* should be regarded as at least as "ingrained" as citizenship based on parentage or place of birth (Wong 2007, 168).

OVERVIEW

The main argument of this chapter is supported by the available data on military naturalizations throughout the twentieth century. Figure 2.1 shows the number of military

naturalizations and their proportion of the total naturalizations in the United States over the twentieth century. As previously mentioned, the United States enacted comprehensive immigration statutes beginning in the 1880s and centralized naturalization processes in the early 1900s. Data are available for the years 1907 through 2010 (excluding 1925 and 1935).[13] According to the Department of Homeland Security, to which the US Citizenship and Immigration Service reports, special provisions regarding the naturalization of military personnel expired in 1925 and again, apparently, in 1935. Despite these limitations, a correlation between wartime and higher numbers of alien military naturalizations is immediately apparent.

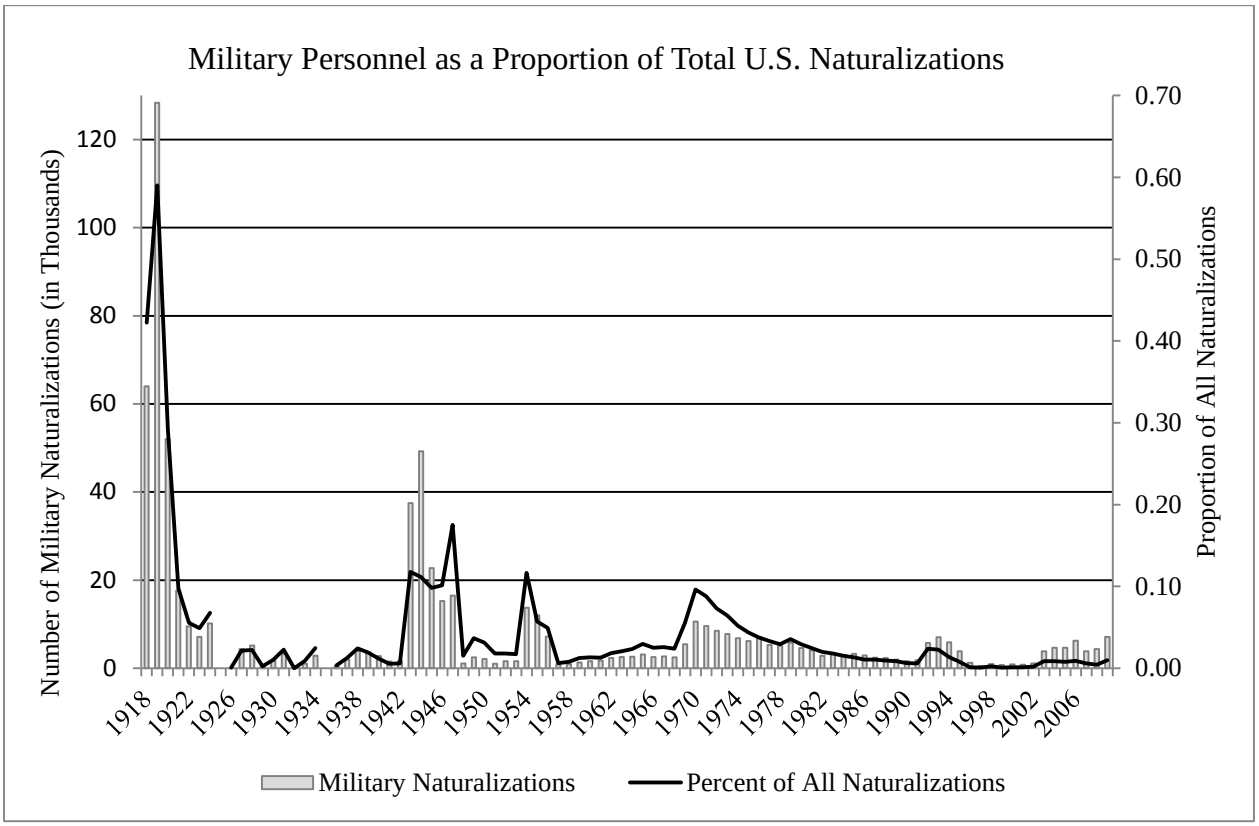
Figure 2.1 shows the proportion of military personnel to total US naturalizations for the years 1918 to 2010. The vertical bars represent the number of naturalizations per year; the solid line is the military's share of the total US naturalizations for that year. These data indicate that the state's military needs have had a profound impact on the naturalization regime for much of US history. Significantly, the last time that military naturalizations neared 10 percent of the total for a given year was during the war in Vietnam. The number of military naturalizations drops off with the end of the draft and the shift to an all-volunteer force in 1973. Although these data on the number of recorded military naturalizations provide some idea of the number of aliens who served in uniform,

[13] In 1906, the Immigration and Naturalization Service (INS) was created. The US Citizenship and Immigration Service (USCIS) was created within the Department of Homeland Security (DHS) that was established in 2002.

we know there were some who did not receive citizenship.[14] These data are supported by the policy history that demonstrates how successive generations of Americans recognized the principle of *jus meritum.* For most of American history, however, military service was a necessary but not sufficient cause for the enjoyment of free and equal status after the war. Instead, as other scholars have argued, veterans often used their military service to extract political, social, and economic concessions from ruling coalitions (Klinkner and Smith 1999; Krebs 2006, Parker 2009; Smith 1997).

[14] For example, the Posthumous Citizenship Act of 1989, examined in chapters 3 and 4, was enacted to recognize the service of alien veterans who never naturalized and are therefore not reflected in the official count.

Figure 2.1: Military Naturalizations as a Proportion of Total US Naturalizations 1918-2010



Source: Data from the 2009 Yearbook of Immigration Statistics, Office of Immigration Statistics, U.S. Department of Homeland Security, 2010.

The history of alien military service and naturalization should be read with two points in mind. The first concerns American political development, and the second is related to the changing definition of who qualifies for citizenship. Prior to the Civil War, citizenship essentially meant state citizenship. Some scholars refer to the Civil War as America's Second Founding because the idea of national citizenship emerged during the 1861–1865 war and the period of Reconstruction that followed (Ackerman 1998). Other

scholars have identified the Union draft itself as the impetus for the creation of United States citizenship—specifically the shift from state to national citizenship (Kettner 1978; Lonn 1951; Ural 2010). During this period, the national government also began to centralize the processing of immigrants.[15] Second, although noncitizens have served in all of America's wars, the definition of noncitizen has changed significantly over time.[16] At one time, noncitizen encompassed free blacks and former slaves who fought in the military prior to the Fourteenth Amendment (1868) and the Naturalization Act of 1870. Native American soldiers were also considered noncitizens prior to the 1924 Indian Citizenship Act (Plascencia 2009). Along similar lines, Japanese-American volunteers during WWII were classified as enemy aliens (Walsh 1994). Beginning with the Fourteenth Amendment to the Constitution that recognized blacks as US citizens, the Unites States removed many of the ascriptive (usually racial or ethnic) prohibitions on citizenship (Smith 1997). These two general points regarding the centralization of political authority and the gradual liberalization of a national concept of citizenship form the backdrop of the history of alien military service and naturalization.

REVOLUTIONARY WAR

Although the idea and practice of *jus meritum* predates the government of the United States, prior to the Civil War it meant state citizenship in exchange for enlistment

15 In 1864, a Bureau of Immigration was established in the Department of Commerce. In 1906, this bureau was renamed the Bureau of Immigration and Naturalization, and eventually the Immigration and Naturalization Service (INS) as the federal government centralized and standardized citizenship policy in the early part of the twentieth century.

16 Although important, the changes brought by the acquisition of new territory and the political incorporation of territories like the Philippines, Puerto Rico, and Guam are not the primary focus of this study.

in a state militia. As the traditional seats of sovereignty, states were the only governments able to offer citizenship during the American Revolution. In fact, it might be said that the British introduced the enlistment-citizenship exchange when Lord Dunmore issued a November 1775 proclamation to the slaves of would-be rebels: side with the Crown and become free men. The Continental Congress countered and "offered land and citizenship to enemy troops who would switch sides" (Jacobs and Hayes 1981, 194; Franklin 1969, 5). A large-scale slave rebellion in the American colonies never materialized and some scholars estimate that the tactic revolutionized otherwise neutral colonists. Dunmore's proclamation was cited as one of the grievances in the Declaration of Independence: "inciting those very people to rise in arms among us" (Holton 1999).

Military planners in the Continental Army debated the idea of offering slaves freedom in exchange for military service. Although General Washington opposed the enlistment of persons not eligible for citizenship, his Quartermaster (overseeing the army's supply needs), Colonel Alexander Hamilton, grew frustrated with the southern states' inability to meet their enlistment quotas, and suggested "Raise two three or four battalions of negroes… by contributions from the owners in proportion to the number they possess. I have not the least doubt that negroes will make very excellent soldiers… for their natural faculties are probably as good as ours… The contempt we have been taught to entertain for the blacks, makes us fancy many things that are founded neither in reason nor experience" (Alexander Hamilton to John Jay, March 14, 1779). Hamilton continued in his letter to Jay: "An essential part of the plan is to give them their freedom with their muskets. This will secure their fidelity, animate their courage, and I believe

will have a good influence upon those who remain, by opening a door to their emancipation. This circumstance, I confess, has no small weight in inducing me to wish the success of this project; for the dictates of humanity and true policy equally interest me in favour of this unfortunate class of men." Hamilton's proposal to enlist slaves as free persons never came to fruition.

Hamilton's letter to John Jay documents his belief that free men make better soldiers than those held in bondage (although the voluntary nature of these soldiers' service would remain in doubt). It also suggests a relationship between one's status and the prospect of faithful allegiance to the political community. The policy towards noncitizens and aliens in uniform changed when the States' military needs waned after peace was concluded with England.

Between the Revolutionary and Civil Wars, the size of the US armed forces (land and naval) was very small. A handful of men were stationed at West Point while naval forces were concerned with fighting piracy off the Barbary coast, i.e. North Africa (Huntington 1959). The demilitarization that followed the Revolutionary War reflected the Founders' belief that standing armies were dangerous to liberty and inconsistent with republican forms of government. Instead, the de-centralized Union placed their security in the hands of state-run militias comprised of citizen-soldiers. Aliens were barred from enlistment in the US armed forces from the mid-1780s until war again prompted Congress to authorize the enlistment of aliens in the US Army in 1811 and Navy in

1813.[17] During the Mexican War, Congress authorized alien enlistment in the Army only.[18]

The pattern of alien enlistment eligibility during these wars, i.e. in the Army and Navy for the War of 1812 and in the Army only for the Mexican War, supports the argument that the Congress accepted alien volunteers in the armed forces in order to meet its security needs. However, the criteria for citizenship and process of naturalization was generally left to the states during this period. There was no federal or US government effort to see that alien soldiers and sailors became citizens. Significantly, and perhaps contributing to the government's inattention to naturalizing enlistees, there was also no draft or large-scale effort to encourage volunteers to avoid the political consequences of a draft. In sum, the number of aliens that served in the US armed forces between the major wars is tiny compared the number that would contribute to the Union victory in the Civil War and the two World Wars that followed (Jacobs and Hayes 1981).

CIVIL WAR

The military needs of the Civil War resulted in the large-scale enlistment of noncitizens by the Union. As President Lincoln described the conflict in his 1861 message to Congress, "This is essentially a People's contest" (Lincoln quoted in Basel 1953, 438). The Civil War engendered a "more substantial" identity in the Union that encouraged military enlistment from groups that were statutorily exempt from the nation's first draft (Engle 2010, 11; Samito 2009). The 1862 Militia Act gave President

[17] Act of December 24, 1811, chapter 10 section 2, 2 Stat. 669; Act of March 3, 1813 chapter 42 sections 1, 10, 2 Stat. 809.

[18] Act of January 12, 1847, chapter 2, 9 Stat. 117.

Lincoln the authority to issue rules for calling up the state militias within the Union.[19] Initially, only "declarant" aliens, or those who had declared their intention to become citizens, were eligible for the draft.[20] Establishing residency and acquiring citizenship was generally a two-step process until the mid-20th century (when it was replaced by the concept of legal permanent residency, or LPR status): first, an alien swore an oath in a state or federal (district) court of his intent to naturalize, and after a period of residency (generally two years) the individual returned to court to take the oath of citizenship.

In 1862, Congress passed the military naturalization statute for former Civil War servicemen—now veterans—who had been honorably discharged and had one year of residency.[21] This statute allowed alien soldiers and veterans to execute "one paper" naturalizations, meaning that they could skip the declaration of intent and proceed directly to the oath of citizenship. The special military naturalization law granted eligibility for one paper naturalization to both conscript and voluntary alien soldiers.[22] In 1864, Congress widened pool of draft-liable persons by redefining citizen-seeking or declarant alien as any who had voted or held public office, even if they had not formally declared their intention in court (Jacobs and Hayes 1981, 192).[23] The 1864 draft regulations represent one of the first federal efforts to enforce a uniform standard for

[19] Act of July 17, 1862, chapter 201 (12 Stat. 597).

[20] Act of March 3, 1863, chapter 75 section 1 (12 Stat. 731).

[21] Act of July 17, 1862, chapter 200, section 21 (12 Stat. 594).

[22] Act of February 24, 1864, chapter 13 section 18 (13 Stat. 6).

[23] Jacobs and Hayes (1981) report that Secretary of State Seward, believing he had such authority, had proclaimed in 1862 that any person who voted would be subject to the draft whether or not he had declared his intention to seek citizenship (Jacobs and Hayes 1981, 192); and the governor of at least one state implemented this policy by assuming that persons who lived in the territory for more than six years had voted (Ibid., 204).

political participation and obligation, a long-held prerogative of state and local governments.

The 1864 draft law treated (male) residents equally in other ways, too. For example, aliens were eligible for enlistment bonuses, which were prevalent due to the process of substitution and commutation, whereby wealthy citizens could escape the draft by finding a volunteer replacement (Wong 2007). With regard to this incentive, Secretary of State William Henry Seward stated, "Exactly the same inducements to military service were open to them [aliens] which by authority of law were offered at the time to citizens of the United States" (Seward quoted in Jacobs and Hayes 1981, 202).[24] Whether conscript or volunteer, alien soldiers and veterans who petitioned through the military naturalization statute during the Civil War were recognized and rewarded for their service during a period of national crisis (Krebs 2006).

In the years following the Civil War, a more restrictive immigration and naturalization regime took shape (Jacobs and Hayes 1981; Smith 1997; Tichenor 2002). For example, Congress barred the admission of aliens under work contract through the Alien Contract Labor Law (1885), and tightened immigration control in general.[25] During the same period—in 1875, 1882, and 1885—Congress expanded the categories of aliens to be prohibited from admission, in 1891 first developed an apparatus for the deportation

[24] Historians have documented the Union's efforts to recruit resident aliens and some unofficial efforts to recruit potential resident aliens, i.e., Irish seeking immigration to the United States (see Murdock 1971; Hayes and Jacobs 1981; Samito 2009; Ural 2010). More generally, see Paludan 1988 and Lonn 1951.

[25] For example, the Immigration Act of 1875 barred the admission of prostitutes and criminals. The Immigration Act of 1882 barred the admission of convicts, "lunatics," "idiots," and persons "likely to become a public charge." This act also imposed a head tax on arrivals and required data collection on the number of arrivals. Of course the Chinese Exclusion Act (1882), which was directed at stopping Chinese laborers, was extended in 1888.

of improperly admitted aliens. Yet provisions for Civil War—and later Spanish-American War—veterans remained, and were even expanded. For example, in 1894, Congress enlarged the pool of applicants eligible to naturalize under the 1862 Militia Act to include Navy veterans. Remarkably, Congress extended the offer of citizenship to alien veterans even as it expanded the categories of immigrants deemed inadmissible to the United States and, if properly admitted, those permanently barred from naturalization.

WORLD WAR I

In the years leading up to the US involvement in WWI, the American state vastly increased its capacity in the area of military organization and prioritized the centralization of the nation's immigration and naturalization regime. For example, in 1906 Congress abolished the state militia system and replaced it with a National Guard. Unlike state militias, the National Guard is a national resource under the authority of the commander-in-chief. Unable to train and effectively equip the militias since the founding, state authorities were eager to abolish the militia system, and be relieved of the responsibility and cost.[26] Also in 1906, Congress renamed the small Bureau of Immigration that had been created within the Department of Commerce in 1864 the Immigration and Naturalization Service (INS). Congress charged the INS with overseeing all new

[26] The militia system was certainly considered ideal by many of the Framers, but professional soldiers considered it inadequate for the nation's defense. For example, George Washington's experience with the nonregulars during the war led him to beg Congress not to dismantle the army, as the militia were not a sufficient defense. Washington and others preferred "professional" militaries. Professional militaries were thought of as compatible with classic liberal economic and political arrangements, whereas military service was conceived of as an occupation for some rather than an obligation for all. For example, in *the Wealth of Nations,* Adam Smith advocates professional militaries over militia (volunteers): professionals performed better, were better trained, and enabled occupational specialization and expertise to develop.

immigrant arrivals, standardizing residency requirements, and processing eligible persons for naturalization.

The First World War encouraged and may have precipitated the transformation of America's military organization. There was some debate over the constitutionality of this new federal approach to conscription in the lead up to the war. Specifically at issue was whether or not the federal government had the authority to directly conscript persons into a national military. Previously the national command authority relied on state militias to act as intermediaries. The federal government set enlistment quotas but the part-volunteer, part-conscript military was organized by state. This arrangement was inefficient and the scale of the First World War persuaded Congress that "direct federal conscription" was justified and constitutional. The WWI draft law included "declarant aliens," or alien residents, that had declared their intent to seek naturalization (the first step in the two-step naturalization process that continued until 1952). Refusal to serve meant forgoing any future possibility of becoming a US citizen; it could also mean leaving the country (Fitzhugh and Hyde 1942, Probst 1956, Samito 2010, Walsh 1994).

In this same nationalizing trend, residency came to replace citizenship as the basis for draft liability during WWI. Nondeclarant aliens could volunteer, and many did but were not "draft liable." Although the draft was supposedly nation-wide, it was not the national draft that would later come with WWII. The WWI draft was conducted

geographically, based on census data, so that a proportional number of conscripts would be drawn from each municipality and state.[27]

The WWI draft legislation reflected the emergence of a national conception of citizenship that was more egalitarian and inclusive. For example, the 1917 draft statute rejected the Civil War-era practices of substitution and commutation as undemocratic and unpatriotic (O'Sullivan and Meckler 1974; Wong 2007).[28] WWI was the first occasion since the Civil War for which large numbers of troops were needed; 687,000 men were chosen by lottery from the 9,500,000 that appeared before local draft boards on June 5, 1917 (O'Sullivan and Meckler 1974, 127-8).[29] Personnel requirements for geographical units were drawn up using census data. Because the census counts residents instead of citizens, a large alien population raised a city or county's quota, making it more likely that any citizen resident would be drafted. As a result, the WWI draft fostered anti-immigrant sentiments around the issue of alien residents. Concerned citizens and their representatives in Congress blamed what they considered alien free riders who avoided service "in their own country" by immigrating to the United States and endangering native-born sons by establishing residence in a given district (Black 1926). The public

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[27] During WWI, the War Department experimented with allowing surplus recruits from one state to off-set low recruitment states; i.e., allowing swaps.

[28] Section 3 of the World War 1 Draft Act (1917) reads:

> no bounty shall be paid to induce any person to enlist in the military service of the United States; and no person liable to military service shall hereafter be permitted or allowed to furnish a substitute for such service; nor shall any substitute be received, enlisted, or enrolled in the military service of the United States; and no such person shall be permitted to escape such service or be discharged therefrom prior to the expiration of his term of service by the payment of money or any valuable thing whatsoever as consideration for his release from military service or liability thereto. (Qtd. from O'Sullivan and Meckler 1974, 124)

[29] "It was felt that the most equitable way to choose the 687,000 men immediately needed would be by lottery, and so, on July 20, the first number was selected from a large glass bowl by the blindfolded secretary of war" (O'Sullivan and Meckler 1974, 128).

demanded through their representatives in Congress that all resident aliens, regardless of their stage in the naturalization process, be made draft liable.

However, the public perception is not supported by the available data showing one in every five soldiers to be foreign born. The foreign-born were over-represented in uniform, i.e. the foreign-born population in uniform was at about twice the foreign-born proportion of the total population (Ford 1997). Jacobs and Hayes (1981) estimate that noncitizens comprised 9 percent of all WWI military personnel. Although these data are imperfect, aliens appear to have made up a larger proportion of conscripts in 1918 and 1919, as Congress broadened the definition of draft-eligible aliens in later rounds of the WWI draft. As a result Ford (1997) estimates that noncitizens accounted for 18 percent of the army, or around two hundred thousand draftees, in 1918 alone. This number is not surprising given the great resistance to the draft. About 300,000 men were eventually classified as "draft evaders," despite official efforts to effect an equitable process (O'Sullivan and Meckler 1974).

In addition, the US government made changes to the citizenship regime to meet its military needs that are not factored in to the recorded number of military naturalizations. For example, despite a proclamation by the Puerto Rican legislature and governor in favor of remaining a territory, Congress made Puerto Ricans US citizens in 1917. The twenty thousand Puerto Ricans drafted during WWI are therefore not counted among the naturalized citizen-soldiers or foreign-born troops (Amaya 2007, 2013). These changes explain why some scholars argue that the "foreign-born" comprised one-fifth of the total number of conscripts in the US armed forces during WWI (Ford 1997).

As in the Civil War, the mass conscription of declarant aliens and voluntary enlistment of nondeclarant aliens during WWI was followed by the enactment of special naturalization provisions for men in uniform. In May 1918, Congress authorized the immediate naturalization of men in uniform, waiving all residency requirements and proof of lawful arrival (certificates of arrival were issued to immigrants beginning in 1906 and were normally required of petitioners).[30] The 1918 military naturalization statute also allowed for the overseas processing of citizenship petitions.

Scholars point to the creation of immigration quotas in the 1920s as evidence of a tightening of the state's immigration and naturalization regime (Tichenor 2002). For example, the 1921 National Quota Law, which limited immigration from each nation to 3 percent of its foreign-born population in the 1910 US Census, was followed by the 1924 National Origins Act, which lowered these quotas to the proportions of the 1890 Census. Restrictive quotas erected against immigrants from the "Asiatic zone" have received particular attention from scholars (McClain 1995; Tichenor 2002; Volpp 2001). Racial nativism prompted Congress to pass the 1922 Cable Act, which denaturalized American women who married noncitizen Asian men. In 1924, the Border Control was established to stem the tide of Asians immigrating to the United States through Meixco.[31]

Most importantly for this study, in 1924 the Supreme Court of the United States ruled that Asian veterans of WWI were ineligible for naturalization under the 1918 military naturalization statute. In *Toyota v. U.S.* (1925), the court reasoned that Congress

[30] Act of May 9, 1918; 40 Stat. 512

[31] In 1924 Congress barred Asians from direct immigration to the United States and established the Border Control to prevent Asians from gaining entry through Mexico Thanks to David Leal for helping clarify this point.

never intended to naturalize Asian aliens.[32] During one of the most restrictive (nativist) periods in US history, veterans' organizations spearheaded the effort to pass legislation overturning the Supreme Court's decision in *Toyota* (1925). In October 1934, the national assemblies of both the American Legion and the Veterans of Foreign Wars adopted a resolution in favor of citizenship for Asian veterans. It appears that the rhetorical power of military service ultimately surmounted nativist efforts to keep Asian veterans from obtaining citizenship.[33] The aforementioned veterans' organizations were instrumental in passing the Nye-Lea Act of 1935, which provided citizenship for Asian veterans almost two decades before the general barriers to Asian immigration and naturalization were formally lifted in 1952. "They took the obligation and they are now Legionnaires," explained the *American Legion Weekly Bulletin* in 1935.

The incremental nature of what Salyer (2004) calls an ideology of "militaristic patriotism" that allowed veterans' organizations to embrace American veterans of Asian descent as brothers in arms is telling. The hypocrisy did not go unnoticed. In light of the early 1935 legislation, one American Legion Post commander to the Congressional

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[32] The court argued that the Congress made a special exception for Filipinos.

[33] The case of Asian veterans of WWI was publicly discussed. See Sidney Gulick, "Men without a Country," *New York Times*, July 12, 1925*;* Kiichi Kanzaki, "American-Born Japanese Loyal to United States," *San Francisco Chronicle*, January 15, 1918, 19; "Japanese in Army Entitled to Citizenship," *Honolulu Star Bulletin*, December 4, 1918; "Cosmopolitan Heroes," *New York Times*, May 14, 1919, p. 49; "77th Artillery's Exploits on Whole American Front," *New York Times*, May 14, 1919, p. 1; Joseph Timmons, "Hawaii Is Vast Incubator of 'American-Born' Japs," *San Francisco Examiner*, March 23, 1921; Dorothy Dunbar Bromley, "The Pacifist Bogey," *Harper's Monthly Magazine* 61 (October 1930): 554. For scholarly accounts see Yuji Ichioka, "The Early Japanese Quest for Citizenship: The Background for the 1922 Ozawa Case," *Amerasia Journal* 4, no. 2 (1977): 1–22; Henry B. Hazard, "'Attachment to the Principles of the Constitution' as Judicially Construed in Certain Naturalization Cases in the United States," *American Journal of International Law* 23 (October 1929): 785; Eric L. Muller, *Free to Die for Their Country: The Story of the Japanese American Draft Resisters in World War II* (Chicago: Chicago University Press, 2001).

Committee on Immigration and Naturalization observed: "It is poor patriotism and sportsmanship to use citizenship in a time of war and then permit it to be cheapened by the Indian-giving tactics after the war is over" (G. Edward Buxtom to Taylor, March 6, 1935).[34] Although the gains from the Nye-Lea Act of 1935 were temporary—as there was no public outcry in response to the detention of Japanese Americans during WWII—they represent the principle recognizing persons as equal citizens in light of their military service even during one of the most nativist and restrictive periods in modern US history.[35]

WORLD WAR II

The principle of residency—as opposed to citizenship, which was first enacted during WWI—continued to determine draft eligibility throughout the twentieth century. The reality of a Second World War quelled concerns about the constitutionality of direct federal conscription as the United States mobilized every available resource for the war effort (Freeman 1971; Friedman 1968; Mickelwait 1940; Roh and Upham 1972). Even as several groups were formally barred from citizenship, including those granted "nominal" citizenship after WWI such as Japanese Americans and nationals of belligerent states, military necessity drove the United States to enlist any and every volunteer (Salyer 2004, 851). Furthermore, the United States enlisted hundreds of thousands of Filipinos from the

[34] Quoted in Salyer 2004, 872. Although some Native Americans were naturalized through the 1918 Military Naturalization statute, it was not until the Nationality Act of 1940 that all Native Americans were granted *jus soli* citizenship. U.S.C. 8 §1401(b). See Haas 1957.

[35] See Lucy Salyer (2004) on this citizenship as "nominal"; see also Mae Ngai (2004). The temporary nature of these gains may be why the story of Asian, particularly Japanese, veterans of WWI is not as widely known as that of their WWII counterparts. The implications of this study for theories of citizenship and immigration are discussed in the following chapter.

then US protectorate of the Philippines (1935-1946) to execute the war in the Pacific (Schlimgen 2010). There was also a great deal of international (allied) military cooperation. For example, Mexican citizens residing in the United States could fulfill their service obligation by serving in Mexican units of the US Army or by serving in the Mexican military. Some ethnic units of the US Army, including a unit of second-generation Japanese Americans (referred to as *Nisei*)— officially excluded from combat as US soldiers—nevertheless served in combat in both the European and Pacific theatres in WWII (McNaughton 2006; Sakamoto 1993).

As during previous conflicts, the WWII series of statutes provided for the naturalization of military personnel at home and abroad. The eligibility requirements of three major military naturalization laws demonstrate how the US government relaxed its immigration and naturalization laws as the military crisis deepened. First, the Nationality Act of 1940 provided for the naturalization of aliens with three years of honorable service in the armed forces of the United States. The 1940 act waived the "declaration of intent" requirement for naturalization that had featured so prominently in the WWI conscription debate. For the first time, the naturalization authority (transferred from the INS to the Department of Justice in 1940 for security reasons) allowed citizenship ceremonies to be performed outside the United States under military supervision (Tichenor 2002).[36] Two years later, the 1942 Second War Powers Act went further by providing for the immediate naturalization of service members. Significantly, the Second War Powers Act

[36] In another major wartime reorganization of government in 1940, Congress transferred the naturalization authority from the INS to the Department of Justice, passed the Alien Registration Act, the Immigration Act, and the Selective Training and Service Act.

provided for the immediate naturalization of service members who enlisted while not lawfully present in the United States. Third, the December 1944 Act offered immediate citizenship in exchange for service even where the person enlisted and served outside the United States. Significantly, the December 1994 Act authorized citizenship for persons with no previous residency or familial ties to the United States 37

The progressive relaxation of the immigration and naturalization regime of the United States demonstrates how the government used the promise of citizenship to entice volunteers. As the war dragged on, the government sanctioned the naturalization of otherwise ineligible aliens in exchange for military service. Perhaps because the crisis was so acute, we see the US government engage in creative policymaking. The political reverberations of alien and previously marginalized military service during WWII has been examined by historians and political scientists (Krebs 2006; Klinkner and Smith 1999; Mettler 2002, 2005; Parker 2009).

COLD WAR

In the last years of WWII, the United States drastically limited the number of alien exemptions from military service. The experience of WWII affirmed the WWI standard that draft liability should derive from residency not citizenship (Walsh 1994). This consensus was codified in the Selective Service Act of 1948, which required all resident aliens—including illegal aliens—to register with the Selective Service. In contrast to previous periods wherein Congress passed military naturalization statutes for specific conflicts, the law providing citizenship for military service from the end of

[37] Act of December 22, 1944 (ch. 662 Stat. 886).

WWII to the present is governed by permanent military naturalization provisions. These provisions first appeared in the Immigration and Nationality Act (INA) of 1952 (66 Stat. 249).[38] Specifically, two sections of the new code, §328 and §329, authorized special naturalization procedures for service during peace- and wartime, respectively. The peacetime provision, §328, allowed aliens who perform three years of honorable military service and are lawfully admitted to the United States to apply for naturalization.[39] During peacetime, military enlistment shaved two years off of the five-year residency requirement for legal permanent residents (LPRs) seeking US citizenship.[40]

The naturalization benefits for wartime service are more generous. The most significant difference is that under wartime provision §329, an alien does not need to be lawfully admitted to permanent residence or legally present in the United States at the time of enlistment.[41] The waiver of LPR status is significant because it authorizes the naturalization of "undocumented" or "illegal" aliens who serve in the US armed forces during wartime.[42] Four periods were designated as "wartime" service from 1952 to 2001,

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[38] Act of June 27, 1952, ch 477 title III, ch 2, 66 Stat. 249.

[39] Under §328, an honorably discharged alien must submit his or her petition within six months of leaving the service (INA 1952).

[40] Section 328 waives certain requirements contained in the civilian naturalization provision (INA 1952 §318). Specifically, aliens are eligible for naturalization without meeting the ordinary requirements: (1) five years' residency in the United States, six months within a state; (2) residence within the jurisdiction of the naturalization court; and (3) a thirty-day delay between petition and hearing. These requirements are waived for peacetime service if the alien is on active duty.

[41] Under the 1952 INA and its amendments, such aliens must have enlisted while present in the United States or its territories.

[42] Under the wartime provision of the INA §329 (Act of June 27, 1952, 66 Stat. 250).

> The benefits of this section are: 1) naturalization regardless of age; 2) naturalization regardless of outstanding deportation orders; 3) the alien enemies provision does not apply; 4) the usual period of five years residence in a state is not required; 5) the petition may be filed in any naturalization court regardless of the person's residency; 6) the usual thirty-day delay period between petition and hearing does not apply. (Jacobs and Hayes 1981, 207)

making military personnel eligible for naturalization under the more generous §329. The first two conflicts, Korea and Vietnam, were declared by Congress to be periods of armed conflict, whereas Executive Orders designated Grenada and the Persian Gulf War as "wartime."[43]

During the Cold War—from the end of WWII to the early 1990s—military naturalization was governed by the two permanent provisions of the Immigration and Nationality Act, §328 and §329.[44] Both the peace and wartime military naturalization provisions are more liberal than the regular (civilian) naturalization requirement for legal permanent residents of the United States.[45] The end of the draft in 1972 and the introduction of the all-volunteer force (AVF) in 1973 did not prompt Congress to revise the military naturalization provisions. Legal permanent resident aliens were (and continue to be) required to register with the Selective Service before and after the introduction of the all-volunteer force. In addition, LPRs were eligible for voluntary enlistment from 1973–2001. Significantly, while only LPRs were eligible for enlistment, the wartime military naturalization statute (as far back as 1952) allowed alien soldiers "not legally admitted" to the United States to become citizens (INA 1952 §329).

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[43] The Korean Hostilities Act (1953) and Vietnam Hostilities Act (1968) made active duty service members who served during these periods eligible for naturalization through INA §329. The ending date for the Vietnam conflict was designated by Executive Order 12081 (1978, 43 Fed. Reg. 42237). Grenada was designated by Executive Order 12582 (1987, Fed. Reg. 339); the Persian Gulf War was designated by Executive Order 12939 (1994, 59 Fed. Reg. 61231). The Grenada EO was invalidated by the 9th Circuit Court because President Reagan attempted to limit the order geographically (*Reyes v INS* (910 F.2d 611, 9th Circuit 1990). Executive Orders activated §329 of the Immigration and Nationality Act that allows for the immediate naturalization of any person serving in uniform.

[44] These provisions first appeared in 1952, but remained in the 1965 INA, and were unchanged by later revisions of the immigration law in 1976, 1986, and 1990.

[45] Naturalization through the military provisions also exempts aliens from the bar against those deemed "likely [to become a] public charge" (LPC).

In the post-WWII period, the idea of exchanging citizenship for military service took on new forms. In a bipolar security environment dominated by competition with the Soviet Union, the US began to offer citizenship to persons either within or with knowledge of the Soviet sphere of influence in exchange for material support that would undermine its Cold War rival. Almost immediately after the end of hostilities in Europe, various proposals for "enlisting 'displaced' Eastern European anticommunists stimulated a lively national debate" in Congress (Jacobs and Hayes 1981, 193). The first indication that US immigration policy would serve ideological ends during the Cold War period came with the 1949 Central Intelligence Agency Act, which authorized a handful of visas to be allocated to European refugees who would enhance "national security"—in particular those who had escaped communist regimes. During the Cold War, the newly conceptualized "refugee policy" was framed as an American "weapon in our ideological war against the forces of darkness" (Loescher and Scanlon 1986, 17).

In 1950, Congress authorized the enlistment of 2,500 Eastern European aliens with specialized skills to serve the national security interests of the United States in their home countries (Lodge Act 1950, 64 Stat. 316). The cap was later raised to 12,500 aliens (1951, 65 Stat. 75).[46] Aliens enlisted under the program that completed five years of honorable service and received an honorable discharge could enter the United States and be eligible for naturalization. The 1950 Lodge Act did not prove to be a vehicle for mass enlistment or political incorporation, as only about 1,300 individuals were enlisted and

[46] Act of June 19, 1951. The final cap of 12,500 was far short of Senator Lodge's initial proposal to enlist 250,000 aliens abroad for a "Volunteer Freedom Corps" not to be outdone by Senator Johnson's (of Colorado) proposal of a 1,000,000-man "freedom army" (Jacobs and Hayes 1981, 206-7).

eight hundred received US citizenship.[47] However, it did establish an important precedent for the use of immigration policy to serve ideological ends. Congress codified national security preferences in immigration policy through the 1952 McCarrren-Walter Act that was passed over President Truman's veto. In his veto message to Congress, President Truman condemned the affirmation of the national origins quota system, which restricted immigration from all non-Western European countries for how the new ideology-based prohibitions would prevent persons fleeing communist rule from qualifying for immigration to the United States.

Throughout the Cold War, presidents used the special "parole power" contained in Section 7 of the 1952 Immigration and Nationality Act (INA) to admit refugees from communist countries who were otherwise inadmissible due to the strict national quota system. For example, despite opposition from Congress President Eisenhower used the "parole power" to admit thirty thousand Hungarian refugees in 1956. Even after the 1965 Immigration Reform Act replaced the national origins system with one that stressed "special skills" and family reunification, presidents continued to admit large numbers of aliens (i.e. Cubans and Vietnamese) for national security reasons connected to Cold War politics (Tichenor 2002, 218).

In the 1980s and 1990s, Congress went beyond admitting immigrants for ideological reasons and crafted citizenship policies to recognize alien military service.

[47] "As of 1976, 812 persons had achieved their citizenship… the Army considered the program 'highly successful,' despite the fact that, as of May 1957 only 1,302 aliens had been enlisted" (Jacobs and Hayes 1981, 196). Based on Congressional testimony, Jacobs and Hayes (1981) attribute the small number of Lodge Act enlistees to the "strict screening and high standards regarding quality of personnel" (Jacobs and Hayes 1981, 196).

For example, in 1989, Congress passed the Posthumous Citizenship for Military Service Act to honor the service of those who served in twentieth-century American wars but had never become citizens. The 1989 Act empowered the attorney general to oversee the application and approval process.

> (d) DOCUMENTATION OF POSTHUMOUS CITIZENSHIP - If the Attorney General approves such a request to grant a person posthumous citizenship, the Attorney General shall send to the individual who filed the request a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person's death.
>
> (e) NO BENEFITS TO SURVIVORS - Nothing in this section or section 319(d) shall be construed as providing for any benefits under this Act for any spouse, son, daughter, or other relative of a person granted posthumous citizenship under this section. (PCA 1989)

The 1989 PCA is discussed in the next chapter because it was transformed (or, in the terms of one scholar of American political development, "functionally converted") in the post-9/11 period to meet the needs of a new class of aliens: military families (Thelen 2000, 105).[48] It is mentioned here to show how both immigration and citizenship policy were recalibrated after WWII to meet national security needs.

[48] Kathleen Thelen's (2000) articulation of "functional" or institutional "conversion" pertains to the post-9/11 transformation of the 1989 Posthumous Citizenship Act and is discussed in Chapter 4.

A similar idea was at work in the Hmong Veterans' Naturalization Act of 2000.[49] The Hmong are an Asian ethnic group that supported the United States forces during the Vietnam conflict. The Hmong fought against communist forces in Laos—where US forces were secretly engaged—and eventually became refugees when communist forces consolidated power. The Hmong Act (2000) facilitates the naturalization of veteran refugees and their surviving spouses by waiving the English-language proficiency and civics knowledge requirements for naturalization. Waiving these two requirements—often cited as vital to maintaining American culture and civic life when discussing immigration in general—for the Hmong suggests another logic of belonging or obligation. The incorporation of the Hmong is exceptional, considering that all the traditional criteria for membership—time and place of birth, nationality of parents, residence, family ties—are bypassed and replaced by demonstrated service at one point in time.

SUMMARY

Like other the other "settler nations" (i.e. Canada, Australia), France, and Israel, the United States has a long history of extending citizenship and other benefits to newcomers in exchange for wartime service (Hartz 1955; Krebs 2006). Over the course of US history, immigrants, minorities, and other marginalized groups have pursued the path of military service to citizenship. This chapter provides the comparative historical and theoretical justification for setting *jus meritum* apart from other claims to political inclusion. Scholars of American political development and others have shown the

[49] 2000 Hmong Veterans' Naturalization Act, Pub. L. 106-107; 114 Stat. 316, May 16, 2000.

efficacy of military service for individuals seeking full and equal citizenship (Krebs 2007). The narrative of the twentieth century demonstrates a substantial link between military service and citizenship. The military is a political institution *par excellence*, and the practice of alien enlistment and naturalization is a long-standing government policy. As demonstrated throughout this chapter, military necessity often liberalizes the nation's immigration and naturalization regime.

We find no federal laws for the naturalization of military personnel and veterans prior to the Civil War because citizenship was a state matter, although several states offered persons citizenship in exchange for enlistment in state militias. Seventy-five years earlier, only citizens (of a state) were authorized to enlist in the Continental Army. As the Revolutionary War dragged on, there were calls to enlist persons not otherwise eligible for citizenship. Hamilton's letter to Jay highlights an important element of *jus meritum.* Freedom was a prerequisite for military service because it was commonly assumed that, with the exception of mercenaries, people would only fight if they had some stake in the outcome.

Table 2.1 summarizes the military naturalization statutes in the United States from the Civil War to the post-9/11 period.

Table 2.1: US Military Naturalization Statutes, Civil War to Post-9/11

Civil War	Allows "one-paper" naturalization for soldiers and veterans. Act of July 17, 1862 (12 Stat. 594).
	1894 law extends military naturalization to navy personnel
WWI	Immediate naturalization of military personnel; waived all residency requirements and proof of lawful arrival; allowed overseas processing. Act of May 9, 1918 (40 Stat. 512)
	Lea-Nye Act (1935) overturns *Toyota v. U.S.* (1925); makes Asian veterans eligible for naturalization
WWII	1940 Nationality Act allows "one-paper" naturalization of military personnel with 3 years residency; allows overseas processing.
	1942 Second War Powers Act waives requirement that person be legally present in United States at time of enlistment
	1944 Act offers citizenship to persons without previous residency in United States , who enlist and serve outside US. Act of December 22, 1944 (662 Stat. 886)
Cold War	Naturalization for enlistment of cultural and military experts outside the United States (Lodge-Philbin Act of 1950)
	Immigration and Nationality Act of 1952 makes peacetime (with residency) and wartime (waives residency requirement) military naturalization provisions permanent; wartime designated for Korea (1953), Vietnam (1968), Grenada (1983), Persian Gulf War (1994), and Global War on Terrorism (2002)
	1989 Posthumous Citizenship recognizes Cold War-era service
	2000 Hmong Citizenship Act recognizes assistance during Vietnam conflict
Post-9/11	2004 National Defense Authorization Act makes post-9/11 service members immediately eligible for naturalization; but makes military naturalization "revocable," contingent on 5 years "honorable service"; allows "posthumous citizens" to serve as immigration sponsor for surviving family members
	2008 MAVNI program allows enlistment of otherwise ineligible alien residents with "vital" skills. MAVNI was suspended in 2015.
	2014 Memo makes undocumented minors that qualify for "deferred action" eligible for military enlistment

The military needs of the state demanded mobilization of every resource within its jurisdiction. If aliens were to be included in the draft, they should be naturalized. The same logic animated Hamilton's letter to Jay during the Revolutionary War. Hamilton proposed that southern states, consistently unable to meet their enlistment quotas due to their large slave populations and the manpower needed to enforce this arrangement, create a battalion of former slaves. It was critical, according to Hamilton, that these men first be given their freedom. The Southern states, of course, never created such a battalion, although many escaped slaves fought for the British in exchange for citizenship after the war. Although crude and far from the voluntary ideal of military service championed today, Hamilton's proposal contains the logic of *jus meritum*. It also illustrates how military necessity pushes wartime leaders toward more creative policymaking.

As each conflict persisted during the Civil War, WWI, and WWII, the state cast a wider net: when the state needed soldiers, noncitizens were subject to the draft. During WWI, residency effectively replaced citizenship as the principle for determining draft liability or eligibility. The residency principle alone was codified as the principle determining draft liability in the 1948 Selective Service Act. The shift in naturalization from a decentralized function of local courts in the late nineteenth century to the fully federalized naturalization process in the twentieth century illustrates the state's readiness to reshape critical institutions during a crisis period. Moreover, when it was deemed necessary, the United States undertook extraordinary efforts such as performing mass naturalization ceremonies abroad during WWII.

While many scholars point to the 1952 and 1965 immigration acts as "critical junctures" in the evolution of immigration policy in the United States over the last century, these acts did not affect the provisions for military naturalization (Tichenor 2002). There are numerous examples of presidents using their "parole powers" to admit aliens from countries that are not traditional sites of immigration to the United States—apparently a violation of the national origins system that persisted until 1965. Many of these aliens did not have family in the United States or "special skills" that would qualify them as immigrants. The post-WWII period saw increased executive action to admit persons in the "national interest." The use of immigration and naturalization policy for ideological and political ends is not new, but the reliance on presidential in place of congressional action does represent a departure from earlier periods of conflict.

The consistency of the practice of *jus meritum* stands in contrast to the ever-evolving immigration and citizenship regimes over the course of American history. On the basis of this history, we can see that *jus meritum* is a consistent, distinct pathway and claim to US citizenship. Not only has the practice survived the more restrictive periods associated with the resurgence of ascriptive civic republicanism identified by Smith (1997), but the military naturalization statutes are also strikingly similar across Tichenor's (1999) immigration policy regimes as discussed above.

The next chapter examines the changes to the immigration and naturalization regime with regard to alien military service in the contemporary period. It assesses the degree to which the post-9/11 period represents a continuation of, or departure from, the general trend observed in previous periods of conflict.

Chapter Three

Alien Military Service and Naturalization in the Post-9/11 Period

OVERVIEW

The previous chapter traced the evolution of enlistment practices and draft laws alongside the enactment of special military naturalization statutes throughout US history. Since WWII, all alien residents have been subject to conscription (Probst 1956). Drafted aliens have served alongside their citizen counterparts and are entitled to the same veterans' benefits as native-born soldiers. This chapter examines alien enlistment and military naturalization in the contemporary, post-9/11 period. These changes include efforts to expand the pool of recruit-eligible personnel to meet national security demands, and executive attempts to shield noncitizen service-members and their families from the immigration enforcement that has increased dramatically following 9/11.[50]

After summarizing these post-9/11 changes, this chapter then examines the Department of Defense's response to undocumented aliens discovered on active duty and efforts to enlist persons not statutorily authorized to serve in the armed forces. These developments are consistent with what has occurred during previous conflicts. For example, the Pentagon's response to undocumented aliens discovered on active duty in

[50] At the time of writing, there is not sufficient public data to assess whether the effort of both the Bush and Obama administrations to prevent the detention and deportation of alien military families and veterans is merely a means of ensuring "military readiness" and bolstering voluntary enlistment or represents a more substantive commitment to these persons as potential fellow citizens.

the contemporary period is consistent with policy changes enacted during previous periods of conflict, i.e., waiving proof of legal entry documents during WWII. Similarly, the post-9/11 effort to enlist persons not statutorily authorized, through the MAVNI (Military Accessions Vital to the National Interest) program, has precedent in the Cold War-era Lodge Act. Finally, the status of alien veterans in the post-9/11 period is similar to that of veterans of previous conflicts: Veteran status does not provide a legal basis to reside in the United States. Increased immigration enforcement after 2001 has made many individuals in this population vulnerable to detention and removal.

This chapter also examines how some post-9/11 developments depart from what was observed in earlier periods of armed conflict. The most important of these departures include probationary and posthumous citizenship, both of which grew out of the national government's effort to meet the mounting needs of the Department of Defense in the post-9/11 period. The experiences of probationary citizens, posthumous citizens, and alien veterans provide insight into the post-9/11 nature of alien military service and naturalization. The status of military spouses and dependents—an issue that nineteenth- and twentieth-century US draft policy tried to avoid—further complicates the picture. While these persons and their status under immigration law is not the focus of this study, they warrant discussion because they make at least one category (posthumous citizenship) necessary and they have an impact on military readiness. As such, the discussion includes the Department of Defense's efforts to protect military family members from detention and deportation in the post-9/11 period, where appropriate. Although military services have renewed efforts to make all service members citizens,

there is still a population of alien veterans in the United States. Presidents George W. Bush and Barack Obama took steps to shield alien veterans and their family members from deportation—however these measures are temporary. New legislation is needed to resolve the status of alien veterans and that of undocumented minors who wish to serve in uniform.

POST-COLD WAR ALIEN ENLISTMENT AND MILITARY NATURALIZATION

As discussed in the previous chapter, all aliens have been required to register with the Selective Service since at least 1948 (some classes were draft eligible under the 1917 statute) and have continuously served as volunteers since the end of the draft in 1972. For the last forty years, legal permanent residents (LPRs) have been able to enlist in any of the services, although they were ineligible for military occupational specialties (MOSs) that required security clearance. Throughout the 1980s and 1990s, each service had specific regulations about who could enlist, although there was little variation among their respective regulations—practically speaking. Persons holding student, visitor, or other special visas, as well as persons granted asylum, are ineligible to enlist, although some are required to register with the Selective Service.[51] Other documents are required to enlist, however the process is diffuse since it relies on individual recruiters to conduct the screening.[52] Prior to 2010, fingerprints were taken at the time of enlistment; however,

[51] 50 USCS App. §456(a) lists the classes exempt from Selective Service Registration including members of the military, students in officer training programs, i.e. academy cadets or those in the Reserve Officers Training Corps, and specified diplomatic personnel. Undocumented aliens are required to register with the Selective Service (under 50 USCS App. §453) but are not eligible to enlist in the armed forces of the United States (Selective Service 2012).

[52] Fingerprints are taken at time of enlistment but significantly, for most of the AVF's history, these data remained only within the Department of Defense. Fingerprints are sent to the FBI only when the

they were not sent to the Federal Bureau of Investigation to conduct a background check unless the service member applied for citizenship. Additionally, the incentive structure for military recruiters, who process tens of thousands of applications each year, rewards the number of enlistments.[53] This system explains why so many undocumented persons found their way into active duty in the 1980s, 1990s, and early 2000s. Although such examples were by no means the norm, a marine recruiter in New York City was convicted in 2005 of procuring green cards for undocumented immigrants seeking to join the service.[54]

Consistent with what Gary Freeman has characterized as "largely expansive and inclusive" immigration policies during the late 1980s and early 1990s, the military was open to recruiting legal permanent resident aliens (Freeman 1995). However, unlike previous periods, in which the Services took steps to ensure that alien service members acquired citizenship, the military (like civilian employers) maintained a kind of "don't ask don't tell" policy with regard to a service member's citizenship status. While citizenship was and is required for re-enlistment, many members serve a single four, six, or eight-year enlistment. Given the risks and pay of enlisted men and women, it is commonly assumed that the forty thousand noncitizens currently serving active duty joined the armed forces to become a US citizen. A 2005 report commissioned by the

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person has applied for naturalization, with the specific authorization of (or request by) the service member (Lescault 1998).

53 Recruiters do inspect the documents, however there is no central database of all US residents containing personally identifiable, biometric information such as fingerprints or DNA by which to verify an individual's identity. After closely inspecting the process, it is not all that surprising that undocumented persons found their way to active duty military service.

54 *US v. Lucas* 2007.

Secretary of Defense found, however, that less than 40 percent of aliens who served in the armed forces between 1995 and 2004 actually acquired citizenship while on active duty (Hattangadi et al. 2005).[55]

A preponderance of data suggests that aliens do not join the military *primarily* to become US citizens (Lamm 2010). Instead—like their citizen counterparts—alien enlistment is motivated by diverse factors. Throughout the 1980s and 1990s, joining the military only shaved two years off of the five-year residency required to be eligible for citizenship. Additionally, some aspects of military service—frequent moves, military deployments, and the "greediness" of military institutions (Segal 1986)—made it difficult to complete the naturalization process, especially during a period that had no official coordination between the Departments of Defense and Homeland Security, home to the USCIS (Lee and Wasem 2009). For this reason, alien soldiers were often discouraged from submitting their naturalization petitions until they arrived at their first duty station (Stock 2011b).

The nonacquisition of citizenship by service members during the 1980s and 1990s is consistent with that of the alien civilian population during the same period. A temporary increase in military naturalizations coincided with the surge of civilian naturalizations in response to the 1986 Immigration Reform and Control Act (IRCA) and the 1995 Citizenship USA initiative, which helped naturalize a million people in 1996 alone (Tichenor 2002, 285). In general, however, military naturalization rates for the entire period never spiked above 40 percent (Hattangadi et al. 2005; 2011). To explain

[55] McIntosh et al. (2011) attempt to update the analyses of these data.

the low naturalization rate among US resident aliens during the 1980s and 1990s, immigration scholars theorize two causes: the weakening of political parties, which were crucial agents of political incorporation throughout the nineteenth century (Tichenor 2002), and the Supreme Court's decoupling of social welfare rights from citizenship after 1965 (Schuck and Smith 1985).

Although military personnel are affected by some of the same factors as civilians, this chapter focuses on how the Pentagon's military needs led to increased attention to alien military service and naturalization. The wars in Iraq and Afghanistan served as what Paul Pierson calls a "focusing event," increasing the salience of nonacquisition of citizenship among service members (Pierson 1993). In response to these conflicts, Congress rewrote the military enlistment and naturalization statutes in the mid-2000s. In 2008, Congress passed two acts designed to expedite the processing of military citizenship petitions. The deployment of alien service members after 9/11 and, especially, the lack of legal protection for the surviving spouses and children of members killed or missing in action under immigration law pushed the Department of Defense to take a more active role in ensuring that all service members became citizens. In sum, military necessity—described by the Department of Defense as a need to maintain "military readiness"—transformed the process of alien military enlistment and helped ensure that nearly all service members could secure citizenship before being discharged from wartime duty.

POST-9/11 ALIEN ENLISTMENT

The launch of the global war on terrorism brought new attention to the status of active duty aliens and their families. Similar to the responses during previous periods of conflict, Congress enacted a number of statutory changes concerning military naturalization in the mid- to late-2000s. The most important of these codified President Bush's 2002 Executive Order that made any person serving on active duty immediately eligible for citizenship.

In line with other wartime leaders, President Bush's 2002 Executive Order expedites the naturalization of active duty military members who serve in wartime. Executive Order 13269 is of particular importance because it establishes the post-September 11, 2001 period as one "in which armed forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force" (Bush 2002; INA 8 U.S.C. §328, §329). This order makes the wartime provision of the INA, §329, applicable to persons on active duty. As discussed in the previous chapter, INA §329 has been the statutory authority for the naturalization of service members since 1952. Beginning with the Korean War, Executive Orders have served this purpose on four occasions: the Vietnam conflict (EO 12081, 1978), the Grenada Campaign (EO 12582, 1987),[56] the Persian Gulf conflict (EO 12939, 1994), and "the

[56] President Reagan's 1987 Executive Order pertaining to the Grenada Campaign was invalidated by the 9th Circuit because it attempted to limit the scope of §329 geographically (EO 12582, Fed. Reg. 3395 (1987)).

period beginning September 11, 2001" (EO 13269, 2002).[57] Any person serving on active duty during these periods is eligible for naturalization under INA §329.

Significantly, service members are eligible for citizenship under INA §329 without first establishing residency in the United States (INA §1440(b), 1952).[58] The residency waiver is important because it is often difficult for this population to establish "continuous residency." Prior to 2010, the USCIS (formerly INS) also treated assignment abroad and deployment—circumstances outside an individual's control—as a break in "continuous residency" per the immigration code. In sum, the residency waiver under §329 is the only way that many young aliens can qualify for naturalization during wartime—with or without a declaration of war from Congress. However, the residency requirement remains a problem for alien spouses and dependents of service members who are stationed abroad.

The 2004 National Defense Authorization Act (NDAA) contained several provisions enabling President Bush's 2002 Executive Order for post-9/11 military service (EO 13269). First, it extended INA §329, previously known as the wartime military naturalization provision, to veterans and members of the Selected Reserve and National

[57] INA§329(a), 8 USCA §1440(a) authorizes military naturalization for service during WWI (no dates specified), WWII (September 1, 1939, through December 31, 1946), and Korea (June 25, 1950 through July 1, 1955). Executive Orders authorize post-Korea naturalizations under INA§329, and include Vietnam (February 28, 1961 through October 15, 1978), EO 12081, 43 Fed. Reg. 42237, (1978); the Persian Gulf conflict (August 2, 1990 through April 11, 1991) EO 12939, 59 Fed. Reg 61231 (1994); and "the period beginning September 11, 2001" (September 11, 2001 to present) EO 13269, 67 Fed. Reg. 45287 (2002).

[58] Per EO 13269, the person must serve on or after September 11, 2001. Until the president issues another EO specifying the ending date for this period of conflict (Bush 2002), INA §329 allows aliens, defined under the Immigration and Nationality Act §1440(b) as "any person not a citizen or national of the United States," serving on active duty to apply for citizenship without first becoming permanent residents or establishing continuous residence in the United States (INA §§328, 329; 8 U.S.C.A. §§1439, 1440).

Guard (NDAA 2004).[59] Persons who served on active duty through the Cold War and post-Cold War period (mid-1950s to 2001) are eligible for naturalization under INA §328, unless they served during one of the specified conflict periods (discussed above), in which case they are also eligible under INA §329. The 2004 NDAA also reduced the residency requirement for §328 "peacetime" applicants from three years to one year of military service, retroactive to September 11, 2001, and waived the processing fees for persons who naturalize through one of the military provisions (NDAA 2004; Stock and Exner 2009).

In 2006, Congress passed a unified enlistment statute limiting enlistment in the all-volunteer force to (10 USC §504(b) 2006). Since 2006, enlistment has been limited to:

A. A national of the United States, as defined in section 101(a)(22) of the Immigration and Nationality Act.[60]

B. An alien who is lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act.[61]

C. A person described in section 341 of one of the following compacts:

[59] The Selective Reserve refers to "active" Reserve components, including those mobilized for active duty. Before 2004, members of the Reserve and National Guard were limited to the less generous "peacetime" provision (INA §328).

[60] 8 USC §1101(a)(22).

[61] 8 USC §1101(a)(20).

(i) The Compact of Free Association between the Federated States of Micronesia and the United States.[62]

(ii) The Compact of Free Association between the Republic of the Marshall Islands and the United States.[63]

(iii) The Compact of Free Association between Palau and the United States.[64]

(2) Notwithstanding paragraph (1), the Secretary concerned may authorize the enlistment of a person not described in paragraph (1) if the Secretary determines that such enlistment is vital to the national interest.[65]

Interestingly, although it eliminated the provision that allowed unlimited alien enlistments during "wartime," Congress kept the language in Section 2, which allows individual Service Secretaries to enlist any person whose service s/he deems "vital to the national interest" (10 U.S.C.A. §504 (2006)). This language reappears in the 2008 MAVNI program that authorizes the enlistment of non-LPR aliens, much like the Cold War-era Lodge Act, which enlisted nonresident aliens with language skills and cultural expertise.

In May 2008, Congress passed the Kendell Frederick Citizenship Assistance Act, which directs the Departments of Defense and Homeland Security to track and expedite

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[62] Section 201(a) of Public Law 108-188, 117 Stat. 2784; 48 USC §1921.
[63] Section 201(b) of Public Law 108-188, 117 Stat. 2823; 48 USC §1921.
[64] Section 201 of Public Law 99-658, 100 Stat. 3678; 48 USC §1931.
[65] 10 USC §504(b) 2006.

military naturalization petitions. Named in honor of a service member killed in Iraq while waiting for his naturalization petition to be processed, the act sets a goal for USCIS to process military naturalization applications within two years of enlistment.[66] Two months later, Congress passed the 2008 Military Personnel Citizenship Processing Act (MPCPA 2008). This Act expanded the definition of "military naturalizations" from service members only to military spouses and dependents. The 2008 MPCPA requires USCIS to process and adjudicate these petitions within six months (MPCPA 2008). A 2010 report by the Government Accountability Office (GAO) found that the USCIS "generally met processing deadlines, but processing applications overseas is a challenge" (GAO 2010).[67]

In 2010, the Department of Defense finally instituted e-verify for potential recruits in order to ensure that they were legally present in the United States at the time of enlistment (Department of the Army 2010).[68] The following year, the Service Secretaries instituted measures to confirm that aliens who are lawfully enlisted start the naturalization process while in boot camp (Traskey 2003; Lamm 2010; Stock and Exner 2009). Since mid-2011, the Army, Navy, and Air Force have made USCIS officials available to recruits at basic training (Department of the Army 2010; Stock 2011b).[69] This move is consistent with the role that the military plays in other areas—for example

[66] Specialist Frederick is one of the service members awarded posthumous citizenship after being killed in combat in Afghanistan and Iraq.

[67] The GAO's conclusion that the USCIS "generally" met its deadlines refers to a 70 percent completion rate of applications from military personnel only (GAO 2010).

[68] Evidence suggests that military leaders have suspected systemic problems with recruiting ineligible aliens for some time. There are 2004 reports that the Department of Defense, in response to the discovery of active duty aliens who enlisted using fraudulent documents, directed the Military Entrance Processing Command to confirm the identities of alien recruits with the Department of Homeland Security (Gillison 2005).

[69] A 2011 report commissioned by the Secretary of Defense "urged" the Marine Corps to follow suit (McIntosh et al., 2011).

with life insurance, medical enrollment, wills, child care plans, powers of attorney, and so on. Despite these measures, the system is not foolproof.[70] To avoid the above-mentioned dilemmas, alien service members must be naturalized as soon as possible under the current immigration regime.[71]

Undocumented Aliens Discovered on Active Duty

In addition to the post-9/11 changes to the statutes governing alien naturalization, it appears that the Department of Defense has changed the way that it handles cases of "fraudulent enlistment" when undocumented immigrants who enlisted under false information are discovered on active duty. Although there is currently no official policy for these types of cases, much can be learned from the publicly available data. For example, in 2003, the Army learned that Private Juan Escalante was an undocumented immigrant when his parents underwent deportation proceeding (Davila 2003; Lorch 2003). At that time, Private Escalante was serving as a mechanic in the Third Infantry in Iraq. While the army had a standard approach for handling cases of fraudulent enlistment in the 1980s (recommending them for courts-martial) and the 1990s (quietly discharging them), it took a different approach with Private Escalante in 2003. The Department of the Army accepted the argument that Private Escalante's military defense counselor made on

[70] For example, if an undocumented person enlists using another person's identity and forgoes naturalization, it is possible for him or her to escape detection. In 2010, a US citizen was sentenced to six months in prison after successfully enlisting in the army on the basis of a previous enlistment with the US Marines. Many in the military community were mostly outraged that he claimed and wore medals that he did not earn (Robbins 2010a, 2010b, 2010c).

[71] Aliens discharged from the military with anything other than an "honorable discharge" face steep immigration consequences, including deportation and a permanent bar from ever seeking US citizenship. 8 U.S.C. §1182(a)(9)(A)(ii).

his behalf: since President Bush's 2002 Executive Order did not specifically exclude illegal aliens, it must include them (Plascencia 2009).[72]

In light of the history of alien military naturalization statutes outlined in the previous chapter—which includes waiving residency and legal entry documentation during wartime—the army's determination that President Bush's Executive Order applies to legal and illegal aliens alike is perhaps not surprising. However, the Pentagon's acquiescence to this interpretation diverges from the contemporary politics of immigration control and the standing policy during the 1980s when undocumented aliens who were discovered on active duty were charged with fraudulent enlistment. Nevertheless, the idea that Private Escalante's wartime service made him eligible for citizenship regardless of his immigration status is in line with similar decisions that have been made during previous periods of armed conflict (O'Neil and Senturk 2004; Stock 2011). It is clear that Private Escalante was protected by his status as a combat veteran in the unit that launched the invasion of Iraq, and which suffered a high number of casualties. Although some anti-immigration activists complained about the decision, Private Escalante became a naturalized US citizen only a few months after the army learned of his undocumented status, "after [receiving] a perfect score on his English and civics test" (Davila 2003). Due to his citizenship, Private Escalante was also able to serve as an immigration sponsor for his parents, whose status was adjusted, allowing them to remain in the country.

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[72] Drawing on the congressional testimony of Dr. Margaret Stock, Professor of Law at the US Military Academy at West Point, LT Heather Herbert, Ft. Stewart AG, argued that EO 13269 applied to both legal and illegal immigrants.

The interpretation of President Bush's Executive Order (EO) as applying to all aliens in the armed forces regardless of their immigration status has opened a window for undocumented aliens on active duty. The cases of soldiers who received citizenship under EO 13269, despite violations of immigration law and Department of Defense enlistment policies, are particularly telling given that none of the soldiers volunteered this information to military officials. Instead, their status was only discovered inadvertently as the result of some tangential investigation. Thirty years ago and throughout the 1990s, it was standard practice to prosecute "illegal immigrants engaging in fraudulent or unlawful enlistment based on citizenship criteria" (Bixler 2003a, 2003b; Traskey 2003). Even in the Escalante case, conservative commentators criticized the Pentagon for "PC insanity" for retaining and supporting the naturalization of a person not legally present in the US (Maulkin 2003)

Despite some promising cases and the apparent sympathy of national leaders for undocumented immigrants on active military duty during recent years, uncertainty remains high for these soldiers and their families. As of today, there exists no official policy regarding how to handle cases of undocumented soldiers who are discovered on active duty. Rather than leaving the fate of these soldiers to the discretion of individual commanders, the Secretary of Defense or the individual Services might consider issuing guidelines for their uniformed disposition.

Private Escalante's case stands in stark contrast to those of pre-9/11 undocumented soldiers discovered on active duty, many of whom faced adverse administrative action and courts-martial for fraudulent enlistment in the 1980s and 1990s.

Cases involving nearly identical facts but with strikingly divergent outcomes are, once again, likely explained by the idea that wars transform the nation's immigration and naturalization regimes, at least temporarily. The US Citizenship and Immigration Services claims, "Between September 2001 and March 2010, more than 58,000 men and women in the armed forces were naturalized" (GAO 2010);[73] however "the agency doesn't track how many were undocumented" (Lee and Wasem 2009; GAO 2010).

Recruitment of Persons Not Statutorily Eligible for Enlistment

Congress also expanded the pool of immigrants eligible for enlistment in the all-volunteer force to meet emerging national security requirements. This section discusses two noteworthy developments. First, in 2008 Congress authorized the Military Ascensions Vital to the National Interest (MAVNI) program that allowed new classes, i.e. refugee and temporary status, immigrants with special language and medical skills to join the all-volunteer force.[74] Legally present non-LPRs are ineligible to enlist under the current statute, however the Service Secretaries may also authorize the enlistment of any person deemed "vital to the national interest" (10 U.S.C.A. §504(b)(1)). First deployed as a pilot program in November 2008, the MAVNI program allowed 1,500 legally present aliens to enlist in the military each fiscal year from 2008-2014 (Kim and Herb 2014; MAVNI 2012; McIntosh et al. 2011). Upon enlistment, these persons can acquire citizenship through the wartime provision (§329) of the INA. Significantly, these

[73] Disclaimer on the numbers: The numbers that officials provide to the media vary. But there is also variation in government studies and reports.

[74] This class of immigrants includes refugees, asylum seekers, and those given temporary protected status (TPS).

enlistees are eligible for citizenship as soon as they enlist, without first becoming legal permanent residents under the wartime provision of the INA.[75]

Like beneficiaries of the 1950 Lodge Act, discussed in the previous chapter which permitted noncitizen Eastern European residents to enlist from 1950 to 1959, the 2008 MAVNI program participants are recruited for their "special skills" (MAVNI 2012). MAVNI enlistees must be fluent in a "strategic language" as defined by the Department of Defense or hold a US medical license.[76] However, unlike the Lodge Act program beneficiaries, MAVNI program participants are highly educated US residents. For example, the first pool of MAVNI applicants had, on average, a master's level education, and health care providers recruited under this program must hold a US license (McIntosh et al. 2011). At the time of the program's suspension, the Department of Defense reported that about 2,900 recruits have been enlisted and thus eligible for citizenship through MAVNI (Kim and Herb 2014).

The second noteworthy development is the suspension of the MAVNI program in response to President Obama's attempt to allow persons brought to the US without legal authorization as minors to enlist through the MAVNI program. The Obama administration announced a policy of deferred action for childhood arrivals (DACA) in June 2012. In late 2014 the president attempted to make DACA participants eligible for enlistment through the MAVNI program, the Republican-controlled Congress suspended

[75] INA §329 waives the minimum of thirty months "continuous residency" and thirty-month minimum "physical presence" requirements of the regular, nonmilitary provision of the INA §318 (the civilian provision).

[76] Reflecting the diversity of US global interests today, the list of "strategic languages" such as Arabic and Russian has grown to more than thirty (McIntosh et al. 2011). MAVNI recruits are also physicians, dentists, nurses, and Roman Catholic priests (MAVNI 2012).

the entire MAVNI program in mid-2015 (Redstate 2015).[77] The authorization of the MAVNI program in 2008 confirms the importance of national security requirements in the post-9/11 period. Congress' suspension of MAVNI in 2015 in response to the president's attempt to allow DACA program participants to enlist through MAVNI demonstrates how partisan differences in immigration policy under conditions of divided government limit the Executive's ability to recruit any alien for the all-volunteer force. To understand why Congress objected to the president's attempt to enlist DACA program participants through MAVNI, some mention of the proposed DREAM Act is necessary.

First, in June 2012 President Obama took the dramatic step of announcing a new policy of "deferred action for childhood arrivals" (DACA), but did not issue an Executive Order, which has the force of law. Instead President Obama relied on a Memo issued by the Secretary of Homeland Security Janet Napolitano, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," that directs USCIS officials to exercise "prosecutorial discretion" with regard to certain young aliens unlawfully present in the United States (Napolitano 2012). The June 2012 memo also authorizes the Department of Homeland Security to conduct background checks and process applications from persons brought illegally to the United States as minors (Napolitano 2012). The Obama administration has essentially created the administrative

[77] In late 2014, the president attempted to make participants in the Deferred Action for Childhood Arrivals (DACA) program, discussed in the next chapter, eligible for enlistment through MAVNI. Unlike MAVNI, DACA does not offer a pathway to citizenship. Rather, the DACA program refers to an executive announcement in 2012 regarding the potential DREAM Act population or persons brought to the US illegally as minors. The DACA program suspends prosecution (detention and deportation) of certain young people under immigration law. In reaction to the president's perceived unilateral move to rewrite immigration law, the Republican controlled Congress suspended the entire MAVNI program in mid-2015 (Redstate 2015).

capacity to implement the DREAM Act, should Congress pass it. Not surprisingly the criteria for eligibility per Napolitano (2012) are nearly identical to the 2003, 2007, and 2009 DREAM Act legislation (Immigration Policy Center 2007). To qualify, a person must be an undocumented alien who came to the United States before the age of sixteen; has continuously resided in the United States for five years preceding June 15, 2012; is not above the age of thirty; is in school, has a high school diploma, passed the GED, or is "an honorably discharged veteran" of the coast guard or armed forces of the United States; has not been convicted of a felony or a significant (or several) misdemeanor offenses; and does not otherwise "pose a threat to national security or public safety" (Napolitano 2012, 1).

Every president since Truman has used the "parole power," discussed in the previous chapter, to shield some group of immigrants or refugees from detention and removal. Congress has often objected to the president's assertion of this power as a violation of the immigration and naturalization code. There are two minor differences between what was observed in previous periods and President Obama's 2012 action regarding DACA. First, there is the matter of scope. Statistics on the undocumented population within the United States are notoriously variable, but millions of young people may be eligible under DACA. Second, President Obama announced in 2014 that successful DACA applicants are eligible to enlist in the armed forces. While the proposed DREAM Act legislation would allow undocumented minors to join the military or go to college in exchange for a pathway to citizenship, whether the president has the power to authorize the enlistment of persons who are statutorily ineligible remains unclear.

Arguably, the MAVNI program has also enlisted persons otherwise ineligible, however the MAVNI recruits are legally present in the United States whereas the proposed 2014 DACA program participants are not.

The President's efforts to make DACA program participants eligible for military service through the MAVNI program led Congress to end MAVNI in mid-2015. This was disappointing to military planners and the highly educated potential MAVNI recruits however, this outcome is not surprising. The discontinuation of the MAVNI program in mid-2015 appears to be a casualty of the stand-off between the President and Congress over what some view as the Executive's attempt to unilaterally rewrite immigration law (Redstate 2015). The Pentagon may argue that the MAVNI program provides personnel with critical skills that it needs in the ongoing conflicts overseas, however this dynamic is not well-known publically. As a practical matter, what little media accounts of the discontinuation of the MAVNI program exist mischaracterize the place of alien service members in the military today.[78] To be clear, the MAVNI program was implemented because the Pentagon has been consistently unable to recruit enough citizens with language and medical skills (MAVNI 2012). After years of offering increased incentives, i.e. signing bonuses, to citizens, the US government began offering citizenship to temporary status aliens with specialized skills willing to serve in uniform in the post-9/11 period.

[78] For example, one conservative news outlet ran the headline "Mo Brooks [Republican-Alabama] stops the outsourcing of military slots to illegal aliens in the NDAA [National Defense Authorization Act]" which suggests aliens are taking military jobs from citizens (Redstate 2015).

The president may argue that his directive to the Department of Defense is attached to his commander-in-chief power, although this argument has not been made publicly.[79] Given the history of *jus meritum,* it is difficult to argue that persons serving on active duty do not deserve to become citizens. From the point of view of members of Congress that do not want to expand immigration, blocking DACA participants from military service will preempt this difficult position. These two efforts, the 2008 MAVNI program and 2014 failed attempt to allow DACA participants to enlist through MAVNI, represent an expansion of the pool of eligible enlistees. In this way, the post-9/11 period is similar to earlier periods of armed conflict where residency and alien status did not pose a barrier to enlistment in the military or the acquisition of citizenship thereafter. The suspension of MAVNI in 2015 suggests there are limits to the president's power under divided government when the Congress is controlled by a party that opposes the president's immigration reform agenda.

Alien Veterans

By taking the lead on naturalization processing and issuing new enlistment guidelines, civilian and military leaders have decreased the likelihood that any additional undocumented aliens will find themselves on active duty. However, these changes took full effect in 2011, meaning that undocumented persons who managed to enlist prior to 2011 will not complete their service contract and be discharged until 2017–2018.

[79] The military enlistment statute does delegate the power to the Service Secretary to enlist "any person" in the armed forces of the United States.

Because citizenship is mandatory only for *re*-enlistment, not for first enlistment, the population of alien veterans may increase over the next decade.

There are alien veterans residing in the United States that served in the all-volunteer force who did not naturalize while on active duty. Many alien veterans mistakenly assume that their military service prevents them from deportation. While this may have been the case in fact, veteran status has never shielded persons from deportation and detention by law. For example, US military veterans are not immune from detention and deportation if their immigration status has lapsed (Shagin 2009). The most recent period of armed conflict drew new attention to aliens in the United States, as well as to border enforcement and security.

In response to media reports and Pentagon concerns about the treatment of current and former service men and women during the era of increased immigration enforcement, the US Citizenship and Immigration Services (USCIS) issued the Forman Memo (2004) directing Immigration and Customs Enforcement (ICE) to exercise "prosecutorial discretion" when placing alien service members and veterans in detention (Forman 2004). The Forman Memo requires authorization from headquarters before issuing a "Notice to Appear (NTA) to current or prior members of the United States military." Forman (2004) directs ICE not to initiate removal proceedings against aliens eligible for naturalization under INA §§328, 329. In cases where the alien is not eligible for military naturalization, ICE agents must consider the alien's record holistically before issuing an order to appear and/or for removal. This insistence in considering the alien's entire record is a stop-gap measure to an unintended consequence of the 1996 Illegal Immigration Reform and

Immigrant Responsibility Act (IIRIRA 1996), which eliminates the discretion of immigration judges to take factors other than an alien's criminal history into account when issuing deportation orders (Lamm 2010, 2011; Stock 2008).

Significantly, the Forman Memo uses eligibility for naturalization under §328 and §329 as the standard, making no mention of a service member or veteran's immigration status. Like Executive Order 13269 (Bush 2002), which does not specifically exclude undocumented soldiers and veterans, the Forman Memo includes special protection for the undocumented. These and other changes enacted in 2004 partially addressed concerns about the protection of alien service members and veterans. Although Congress has also tackled many related issues—including legal residency and naturalization for military family members, protection for alien spouses and dependents of those killed and missing in action, and the continued deportation of alien veterans and military family members—some problems remain (Jontz 2007; Stock and Exner 2009; Timmons and Stock 2010).

Both Presidents George W. Bush and Barack Obama have attempted to shield alien veterans from deportation through administrative action. For example, the Forman (2004) and Morton (2011) Memos direct ICE agents to exercise "prosecutorial discretion" and discourage officers from issuing NTA and Deportation Orders to current and prior members of the US Armed Forces (Forman 2004; Morton 2011). Despite directives to exercise "particular care and consideration to veterans and members of the US Armed Forces" and requiring authorization from headquarters before placing these persons in Removal Proceedings (Morton 2011), alien veterans continue to be deported,

and endure—in the words of the Supreme Court—the "equivalent of banishment or exile" (Padilla 2010, 1486; Delgadillo 1947).

Once issued a Notice to Appear (NTA), an alien is considered to be in "Removal Proceedings," making it difficult to escape deportation. Alien veterans who served during wartime and qualify for naturalization under INA §329 are an exception because the statute specifically authorizes naturalization while in "Removal Proceedings" until they are physically deported. But many alien veterans residing in the United States have not served during "wartime." Since the introduction of the all-volunteer force in 1973, service during only eighteen of the thirty-nine years qualifies one for citizenship under the wartime provision. Those who served during peacetime are eligible for naturalization under §328, formerly the peacetime statute, but not if they are in "Removal Proceedings"—that is, they are not eligible after they have been issued a NTA. These complications elucidate why both the Forman (2004) and Morton (2011) Memos discourage executive agents from issuing these notices to former members of the armed forces and their families. It should be noted that there is no evidence of congressional intent to deport current or former members of the armed forces. In fact, the strictness of the immigration code appears to be an unintended consequence of the 1996 immigration reform law coupled with increased enforcement following the 9/11 conflict.

First, the 1996 law (IIRIRA) eliminated the executive's ability to intervene on behalf of aliens deemed a threat to the national interest. During WWI—a period also characterized by increased vigilance toward the foreign-born on American soil—Congress amended the immigration code (INA §319) to include deportation for aliens

convicted of crimes involving "moral turpitude" (Padilla 2012). However, from 1917 to 1990, judicial recommendations against deportation (JRADs) prevented the removal of aliens for minor offenses or when deportation was not in the interest of the United States. The ability of judges to bind the executive through JRADs was limited by Congress in 1952, and eliminated completely in 1990 (Padilla 1990, 1478-80). From 1990 to 1996 the attorney general retained the power to halt deportation based on convictions in a criminal court. The use of judicial, then executive, discretion provided a remedy for aliens with extenuating circumstances, such as alien veterans.

However, as mentioned previously, IIRIRA contained a number of provisions that require the detention and deportation of aliens convicted of an "aggravated felony,"[80] expanded the definition of "aggravated felony" to include twenty categories, and made it retroactive (IIRIRA 1996). As a result, any alien convicted of one of these twenty crimes was subject to immediate and mandatory deportation (8 U.S.C. § 1101(a)(43); AILA amicus 2012, 7).[81] The 1996 IIRIRA also curtailed the attorney general's authority to stop the deportation of aliens when removal is the result of criminal activity, thereby ensuring that the executive could not blunt the impact of the law (Padilla 1990, 1478–80).

The 1996 IIRIRA—coupled with the increased enforcement of immigration law following the 9/11 attacks—has resulted in the detention and deportation of alien veterans. The Executive, unable to intervene in removal proceedings since the 1990s, directed his agents as early as 2004 to exercise discretion when encountering "current and

[80] Public Law No. 104-208, div. C, §321, 110 Stat. 3009-546 (1996).

[81] Furthermore, "even broader categories of offenses require mandatory immigration custody while it is determined whether or not an alleged noncitizen is deportable or has available relief" (AILA 2012, 7; Pub. L. No. 104-208, div. C, §321, 110 Stat. 3009-3546 §1226(c)).

former members of the Armed Forces of the US." For example, the Forman (2004), Morton (2011), and Napolitano (2012) Memos discourage issuing NTAs to those persons whose removal is not "in the interest of the US." Despite these directives and the requirement that agents need specific authorization from headquarters before issuing NTAs to these persons, alien veterans continue to be detained and deported regardless of long-standing residency or community or family ties (Barbassa 2010; De Genova 2002; Lamm 2010; Traskey 2003).

As it stands, according to the Department of Homeland Security, veteran status has "no effect, positive or negative," concerning a person's legal right to reside in the United States (Marrero 2010). The precarious legal situation of alien veterans living in the United States has prompted some to call for a nonpunitive adjustment of status process for any person currently serving in the military to keep the alien veteran population from growing (Shagin 2009). An unknown number of aliens are discharged from the military each year under honorable conditions after satisfactorily completing their term of service. The 2010 GAO report found that the USCIS cannot identify military spouses and dependents, alien veterans who have been deported, and military personnel the agency is processing for deportation (GAO 2010).

Immigration advocates such as the American Immigration Lawyers Association (AILA) argue that alien veterans should simply be declared "American nationals"—like persons born in certain US territories—to acknowledge that, although they are not citizens, they have some claim to belonging above and beyond other long-term residents (KTVU 2009; Latina Lista 2010a; Liewer 2009; NLG 2009). But such a declaration

would require congressional action, which—if the case of Filipinos (who enlisted during WWII but did not receive funding for veterans' health benefits until 2009) is any indication—is unlikely to gain much traction or public attention (Levs 2009; Schlimgen 2010; Schuering 2012). In the meantime, immigration advocates claim that over three thousand undocumented veterans are contesting deportation orders (Latina Lista 2009). The stories of some veterans who have been deported or are under deportation orders recently posted their stories on the website "Banished Veterans" (Banished Veterans 2012; see also Latina Lista 2010b; Valenzula 2012; NLG 2009; Ruhman 2009).[82] Once deported—many for old crimes reclassified under the 1996 IIRIRA—these veterans are barred from reentering the United States for life.[83] In death, however, they are granted reentry, because as veterans they remain entitled to be buried at government expense in a veterans' cemetery (Marosi 2012).

POST-9/11 CITIZENSHIP THROUGH MILITARY SERVICE

The section examines post-9/11 developments in the area of alien military service and naturalization that depart from what was observed in previous periods. The most important departures, probationary and posthumous citizenship, are examined below.

[82] Chapters of the American Immigration Lawyers Association (AILA), among others, submitted *amici* briefs that include actual cases involving military and veteran clients (*Amicus Chaidez* 2012; A*micus Hernandez* 2012; *Amicus Padilla* 2010; Carson 2006).

[83] The consequences of removal or deportation are steep. Per the Immigration and Nationality Act, "after removal for an aggravated felony, a noncitizen is permanently barred from returning to the United States." 8 U.S.C. §1182(a)(9)(A)(ii).

Probationary Citizenship

First, persons who naturalize through one of the military provisions of the INA acquire citizenship that is "revocable" for up to five years—conditional on the military's "characterization of service." It appears that after 2008, Congress created a new category of citizenship for persons who naturalize through the military provisions of the INA. Specifically, the statutory language of the 2008 amendment to the INA, known as the 2008 Military Naturalization Act (MNA), appears to have created a new form of "probationary" or conditional citizenship for persons who naturalize through the military provisions (sections 328 and 329). The 2008 amendments to INA were discussed above as codifying President Bush's 2002 Executive Order designating the post-9/11 period as "wartime" under the INA (1952). In fact, through these amendments, Congress appears to have narrowed the scope of President Bush's 2002 Executive Order scope in a way that raises constitutional concerns. Congress's 2008 amendments state that the Department of Homeland Security (DHS) may initiate denaturalization against a veteran in the event that "[t]he individual is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years" (INA §328, §329; MNA 2008).

The 2008 MNA effectively created a new class of citizens whose citizenship is contingent upon remaining in the good graces of their (military) employer. From a constitutional point of view, this amendment presents two main problems. First, the 2008 amendments elevate a sometimes administrative finding of an executive department to the level of a judicial finding of guilt. Second, they present grounds for denaturalization

in addition to those specified by the Supreme Court—namely, fraudulent representation during naturalization proceedings.

The 2008 MNA creates a highly problematic form of "probationary citizenship" unique to persons that naturalize through the military provisions of the INA. The 2008 MNA allows the Department of Homeland Security to initiate denaturalization if a person is separated "under other than honorable conditions" up to five years after taking the oath of citizenship. The plain reading of the statute exceeds what could generously be called "congressional intent." Nonetheless, the 2008 MNA states that the military's characterization of an individual's service, as documented in his/her military discharge papers, is sufficient proof of "less than honorable" service (Timmons and Stock 2009). This characterization is based on discharge papers (known as a DD-214) that each person receives when they are separated from the military, which include a "characterization of service."

The type of discharge that one receives is significant, because it establishes eligibility for federal and state veterans' benefits and, as the official summary of an individual's military record, is useful for obtaining civilian employment. Generally, determining the type of discharge is an administrative manner, as most people enter and exit the service on good terms; however, some discharges or characterizations of service—such as "bad conduct" or "dishonorable" discharge—are punitive. Punitive discharges can only be awarded at courts-martial, which preserves most—but not all—of an individual's rights to due process. "Other than honorable" discharges are administratively awarded, which means that the Department of Defense alone makes the

determination based on the recommendation of the individual's last Commanding Officer (Stock and Exner 2009; Timmons and Stock 2009). At this point, communication between government entities can complicate the process, as it is unlikely that enlisted personnel or military commanders understand that their administrative recommendation may become grounds for revocation of citizenship, deportation, and a permanent bar against ever seeking admission to the United States.

The plain reading of the 2008 MNA makes an administrative finding—"characterization of service"—by an executive department without judicial review grounds for revocation of citizenship. A charitable reading of the statute is that Congress intended to only make punitive discharges that were awarded at courts-martial—as the result of a conviction of the Uniform Code of Military Justice—grounds for revocation of citizenship.

Prior to the Military Naturalization Act of 2008, only discharges awarded at courts-martial had punitive immigration consequences. Because an "other than honorable discharge" (OTH) was awarded administratively, there were no adverse immigration consequences to receiving such a discharge, although an OTH makes a person ineligible for military naturalization. In contrast, depending on the criminal conviction they accompany, the "bad conduct" and "dishonorable" discharges can and do, respectively, lead to deportation. Prior to the 2008 MNA, this line also divided military discharges with and without adverse immigration consequences. The 2008 amendments to the INA are problematic because they allow DHS to initiate denaturalization proceedings against military members that "are separated under other than honorable conditions before the

person has served honorably for a period or periods aggregating five years" (INA §328, §329; MNA 2008). It is possible that Congress only intended revocation of citizenship to be applied to service members convicted at courts-martial and awarded a "bad conduct" or "dishonorable" discharge.[84]

Under the 2008 MNA, the service member has no recourse for protesting the type of discharge that he or she receives until after being discharged, when he or she can file a petition to the Board of Corrections. What is new here is the inclusion of "other than honorable" discharges in the type of discharge (the others require a courts-martial and some finding of guilt) that rise to the level of a felony conviction in civilian court. Felony convictions in civilian courts often result in deportation hearings of legal permanent residents. Military offenses are assigned a level of severity/guilt when the DHS reviews an immigrant's immigration status. Generally, conviction at courts-martial rises to the felony standard. Significantly, the 2008 MNA awards an administrative decision (within the complete control of the executive and not subject to judicial review) the force of a felony conviction in a civilian court.

It is important to keep in mind that, until the 2008 Military Naturalization Act (MNA), only alien service members had to worry about the "immigration consequences" of their service. However, the 2008 amendments made the revocation of citizenship a possibility for persons who naturalized through the military provisions (INA §328, §329). While there have always been serious immigration consequences for aliens based on

[84] Specifically, Congress may not realize that "other than honorable" is actually a type of administratively awarded discharge.

military discharge, the 2008 MNA makes naturalized American citizens just as vulnerable to denaturalization and eventual deportation as alien service members.[85] In essence, the statute grants administrative findings by the Department of Defense the same weight as a court conviction. These administrative determinations are reached without judicial oversight or even judicial awareness, which presents problems regardless of the individual's citizenship status at the time of discharge—although aliens face much more dire consequences.[86]

The second constitutional concern raised by the 2008 act is that the Supreme Court has held that citizenship can only be "revoked" from naturalized citizens if the government can prove fraud or misrepresentation by the immigrant during the naturalization interview process. Thus, the 2008 amendments depart from longstanding immigration law and constitutional interpretation—even in cases where criminal wrongdoing is proven in a courts-martial. Whether intentional or not, the statutory language of the 2008 MNA allows an executive department's administrative finding to effect permanent immigration and naturalization outcomes. Even denaturalization on the basis of the punitive discharges awarded at courts-martial is problematic because the military justice system protects most but not all of an individual's rights to due process.[87]

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[85] Military commanders have used the threat of a "less than honorable" discharge (and subsequent deportation by another government agency) to pressure an alien service member into what amounts to a plea-bargain in the military justice system. For example, in May 2009, Marine Corporal Ahmad Siddiqi was nearly deported to "his native Afghanistan" following an incident in Farah province, Afghanistan, although his family had sought asylum in the United States in 1990, where he had lived continuously until enlisting in the Marines (Cavallaro 2010).

[86] In some cases, service members are not even aware of the consequences of this administrative sanction.

[87] It is unknown whether the military has requested "denaturalization" of any members. Sometimes an Other than Honorable or OTH discharge is awarded when a service member is convicted of a civilian

In granting the Department of Homeland Security special authority to revoke the citizenship of any person naturalized through the military provisions of the INA for up to five years after becoming a citizen, the law creates a form of probationary citizenship, unique to naturalized US citizens who acquired their citizenship through military service.[88]

Table 3.1 summarizes the types of military discharges, how each is awarded, and the attendant consequences for immigration.[89] Only military discharges are awarded at courts-martial, i.e. through a judicially-supervised process, have immigration consequences. Significantly, the 2008 Act effectively gives the Other than Honorable (OTH) military discharge a similar weight to those only awarded at courts-martial.

criminal infraction, i.e., drunk in public, DUI. In other cases, an OTH is awarded because a commanding officer suspects that the individual has violated orders and regulations. The offenses were not serious enough to warrant courts-martial. All service members are subject to NJP, in which the commanding officer acts as investigator-prosecutor-judge-and-jury and, in case of persons assigned to US Navy ships, the service members do not have the right to request courts-martial (to argue their case to a disinterested authority). Most disciplinary action takes the form of Non-Judicial Punishment (NJP) by Commanding Officers (Article 15 UCMJ) that is not subject to judicial review. Service members are regularly awarded an "other than honorable" discharge without being convicted in any court.

[88] The most benign explanation, again, is that lawmakers are ignorant of how the military and the military justice system actually operate. Regardless, the statutory language raises a question of equal protection by treating native-born and naturalized citizens differently based on how and when they acquired US citizenship.

[89] In addition, there is an "entry level" discharge also called "entry level separation" (ELS) that is administratively awarded for active duty service of less than 180 days. An ELS is usually awarded in cases where an individual does not complete boot camp. There are no punitive immigration consequences but the person is not eligible for military naturalization (Stock 2011).

Table 3.1: Military Discharge Types, How Awarded, and Immigration Consequences

Military Discharge Type	How Awarded	Punitive Immigration Consequences?
Honorable (HON)	Administrative	None
General under honorable conditions (GEN)	Administrative	None
Other than honorable (OTH)	Administrative	None
Bad conduct (BCD)	Only at courts-martial	Depending on criminal conviction, may lead to deportation
Dishonorable (DD)	Only at courts-martial	Depending on criminal conviction, mandatory deportation

Adapted from Stock 2011, 25.

Interestingly, only service members who naturalize through one of the military provisions after 2008 are at risk of denaturalization if the military determines that they do not perform five years of honorable service after taking the oath of citizenship.[90] While

[90] Specifically, the 2008 amendment authorizes the Department of Homeland Security to initiate denaturalization proceedings against a service member if the Department of Defense considers the individual's postnaturalization service (up to five years!) to be "other than honorable." Service members cannot challenge nonpunitive types of discharge, which include: "honorable," "general under honorable conditions," and "general under other than honorable conditions." It is the last of these three that Congress

the nonmilitary naturalization provision requires a minimum of five years of residency, the process is final, there is no probationary period, and citizenship cannot be revoked based on the military's characterization of service (Timmons and Stock 2009). To avoid these pitfalls, the American Immigration Lawyers Association advises that clients may be better protected by naturalizing through the regular, rather than the military provision, of the immigration code (AILA 2012).

Posthumous Citizenship

The other important departure from previous conflicts observable in the post-9/11 period is posthumous citizenship. Congress transformed the Cold War-era Posthumous Citizenship Act (PCA 1989) into a vehicle for protecting the families of service members killed or missing in action from detention and deportation.

First, Congress transformed the Cold War-era Posthumous Citizenship Act (PCA 1989) into a vehicle for protecting the families of service members killed or missing in action from detention and deportation. There are tremendous differences between the concern that the Department of Defense has shown for military spouses and dependents in the post-9/11 period, partly because military families did not exist during earlier periods when large numbers of single young men were enlisted for short periods.[91] During the post-9/11 period, the Pentagon framed the immigration status of service

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specified as grounds for denaturalization. Perhaps Congress intended that these punitive discharges—those only awarded at courts-martial—

be grounds for denaturalization.

[91] The period following the end of the draft (1972) and introduction of the all-volunteer force (1973) coincided with a transformation in military organization wherein the enlistment period lengthened, service members received more high skills training, and re-enlistment was encouraged to retain a "professional" military force.

member spouses and dependents was framed as an issue of "military readiness" (USCIS Memo 2010). Military readiness, while it generally concerns combat readiness, also involves pre-deployment planning such as creating wills, granting powers of attorney, formulating childcare arrangements, and other contingency plans while the service member is deployed. A 2010 US Citizenship and Immigration Service memo refers to "Pentagon concerns" over the policies of the agency's enforcement division (ICE) regarding the cases of military spouses, family members, and alien veterans. USCIS memos show that there are, in fact, military leaders who are aware that some military families include undocumented persons or those whose immigration status has lapsed (Barbassa 2007)·

Under the Bush and Obama administrations, executive agents were encouraged and then directed via memoranda to suspend the deportation hearings of military family members and alien veterans. Although the trend has been toward expanding the protection of military-related aliens, there have been setbacks as well. For example, President Obama's May 2011 announcement that his administration would no longer intervene in the deportation process of persons whom it is not in the public interest to deport came as a blow to military attorneys and civilian policymakers who have worked toward securing the residency status of active duty spouses, children, and alien veterans.[92] In response, in August 2011, President Obama announced that each of these cases would be reviewed individually.

[92] Margaret Stock, personal communication to author, May 5, 2011.

Most recent reports suggest that both the Department of Defense and USCIS are aware that the immigration status of many military families is questionable (Preston 2010; USCIS Memo 2010; Stern 2010; VerBruggen 2010). USCIS statements recognize the Pentagon's interest in immigration policy as it affects military readiness (USCIS Memo 2010). A USCIS Policy Memo (2010) recommended that ICE agents "exercise discretion" when deciding whether to detain "long-time lawful permanent residents, juveniles, the immediate family members of US citizens, veterans, members of the armed forces and their families, and others with illnesses or special circumstances" (Lee and Wasem 2009; USCIS Memo 2010). The current ICE policy "disfavors" but does not prohibit initiating removal procedures against military spouses and dependents (Lee and Wasem 2009; Morton 2011). The previously discussed Morton (2011) Memo implements these recommendations, giving "particular care and consideration to veterans and members of the U.S. armed forces" (Morton 2011).

The lack of legal protection for family members is further complicated in the event of the service member's death (Lamm 2010; Stock 2006; USCIS Memo 2010; Walsh 1994; Yates 2002). Existing legal institutions and structures have been reworked in response. For example, as discussed in the previous chapter, in 1989, Congress passed the Posthumous Citizenship for Military Service Act to honor the service of those who served in twentieth-century American wars but never became citizens (Posthumous Citizenship Act 1989). Per subsection (e), the 1989 Posthumous Citizenship Act was strictly honorific—that is there were "NO BENEFITS TO SURVIVORS." The issue of posthumous citizenship was revived after the 2003 invasion of Iraq when it was used to

solve a practical problem arising from (mostly alien) combat deaths. An alien spouse or child of an American citizen soldier could also end up without benefits if the soldier was killed or missing in action (§329 allows for either possibility). Previously, the death of the service member left many spouses and dependents without an immigration sponsor. This applied to cases of citizen deaths as well, say, if the spouse had filed a naturalization petition or intended to file when he or she met the residency requirement.

Several high profile cases led Congress to revise the 1989 Posthumous Citizenship Act (PCA), through §1703 of the National Defense Authorization Act for Fiscal Year 2004.[93] The Post-9/11 Posthumous Citizenship Provision enacted through the National Defense Authorization Act for Fiscal Year 2004 (NDAA 2004).[94] This 2004 act revised INA §329, charging the Secretary of DHS—in coordination with the Office of the Secretary of Defense (OSD)—with the authority to review applications and, if appropriate, issue a certificate of "posthumous citizenship" to the family, which states that the government considers the deceased to be a citizen of the United States "at the moment of death."[95] Applications for Posthumous Citizenship, Form N-644, must be filed within two years of the service member's death. Quoting Casualty and Mortuary Affairs:

> Public Law 101-249, as amended, provides that an alien or non-citizen national of the United States who dies as a result of injury or disease incurred by active duty

[93] The Posthumous Citizenship Act (Public Law 108-136 §1703); National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

[94] 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.

[95] National Defense Authorization Act of 2004 §1703 amended the INA.

with the U.S. Armed Forces during specified periods of military hostilities may be granted United States citizenship. If the application is approved, a Form N-645 - Certificate of Citizenship will be issued in the name of the decedent (the deceased veteran). The certificate establishes that the decedent is considered a citizen of the United States as of the date of his or her death…

To qualify for Posthumous Citizenship, the decedent must have been an alien or non-citizen national of the United States who served honorably in an active-duty status in the military of the United States from September 11, 2001, until terminated by Executive Order of the President and who died because of injury or disease incurred in or aggravated by that service and met one of the following enlistment requirements:

Was enlisted, reenlisted, or inducted in the United States, Panama Canal Zone, American Samoa, or Swain's Island; Was admitted to the United States as a lawful permanent resident at any time; Entered the United States, Panama Canal Zone, American Samoa, or Swain's Island pursuant to military orders at some time during such service…

The application may be filed by the descendant’s Spouse, Father/Mother, Son/Daughter, Brother/Sister; Administrator or decedents estate; or Guardian, Conservator, or Committee of decedent's next of kin; or Service organization

recognized by the Department of Veterans Affairs (www.hrc.army.mil) (Accessed November 13, 2012).

The 2004 amendments ensured that the surviving family members of a posthumous citizen would be eligible for the same benefits provided to citizen spouses of citizen soldiers killed or declared missing in action. The new role of the posthumous citizen arose in response to the casualties in Iraq and Afghanistan, which often left military wives and dependents without an immigration sponsor [usually a family member] and therefore ineligible for legal residency. The 2004 NDAA allows a "native-born" or naturalized citizen service member to posthumously serve as the immigration sponsor for his or her surviving noncitizen spouse, parents, and minor children. INA §329 allows for either possibility. The USCIS website contains information for: Survivor Benefits for Relatives of US citizen Military Members (including Posthumous Citizens), Survivor Benefits for Relatives of Non-US-Citizen Military Personnel, and Survivor Benefits for Noncitizen Relatives of Military Personnel (USCIS Survivor Benefits website 2012).

Whereas the 1989 PCA explicitly prohibited the attachment of "any benefits" to the honorific title, the post-2004 PCA ensures government benefits to survivors, and creates a special category of permanent residents. The transformed PCA allows survivors to become permanent residents but stops short of creating a pathway to citizenship. For this reason, the 2008 NDAA included a provision that allows family members of citizens that naturalized through INA §329(a) to be immediately eligible for naturalization under §319. As discussed in the previous chapter, §329 of the Immigration and Nationality Act

(INA) has been applied since WWII to naturalize alien members of the armed forces who serve in American wars abroad. Making civilian family members of service members killed in action eligible to naturalize through the wartime provision of the INA is exceptional. Previously, National Guard and Reserve members had to wait a year to be eligible.[96] In contrast, the 2004 congressional amendments to the wartime section made surviving family members of posthumous citizens immediately eligible for naturalization (Stock and Exner 2009).

Why Congress chose to add surviving family members to the population eligible under §329 rather than amend some other INA provision remains unclear, although the constellation of political forces provides some clue. During this period, comprehensive immigration reform was debated and rejected, discouraging policymakers from amending nonmilitary provisions of the INA, and essentially requiring new legislation. The 2004 and 2008 changes to the INA regarding posthumous citizenship and the naturalization of their family members may have been easier to accomplish by simply attaching them to the Defense spending bills. In any event, the transformation of Posthumous Citizenship from an honorific to a vehicle of naturalization for civilians through INA §329 is a significant development (Amaya 2013; Plascencia 2009; Stock 2011).[97]

The practice of awarding posthumous citizenship to service members killed in Iraq and Afghanistan—over 139 such awards have been made through 2012—and

[96] Until 2006, when Congress eliminated the "wartime versus peacetime" distinction, Title 32 (Reserve and National Guard) service members activated for service in Iraq and Afghanistan were ineligible to naturalize through INA §329.

[97] The naturalization of dead soldiers has been criticized as a continuation imperialism through the appropriation of Latino service (Amaya 2007, 2013).

amending INA §329 to make their survivors eligible for citizenship are pragmatic solutions to unanticipated problems airing from the needs of the military (Perry 2012). While these accommodations have certainly improved the practical consequences for survivors, relatively little discussion has addressed the political consequences of the practice of awarding dead soldiers citizenship, in spite of its significant departure from what was observed during previous periods.

Under the current immigration code, noncitizen family members of active duty personnel are vulnerable in other ways. In 2011 the USCIS Immigration and Customs Enforcement director Morton (2011) issued a memorandum to field agents to exercise "prosecutorial discretion" with regard to alien spouses and family members. Citing eight executive memoranda—dated July 15, 1976 to June 17, 2011—Morton (2011) states that "prosecutorial discretion in civil immigration enforcement matters is held by the Director and may be exercised, with appropriate supervisory oversight, by certain ICE officials" (Morton 2011, 3).[98] The precedent for Morton (2011) may have been included to counter some of the criticism following the leak of the USCIS Policy Memo (2010), referred to by conservative blogs and news outlets, as well as by conservative proponents of strict immigration policy, as "The Amnesty Memo" (National Review 2010). Morton (2011) effectively extended the Forman (2004) protections against issuing NTAs and detention for unlawful presence to alien spouses and immediate family members of US military personnel. Morton (2011) also rescinded two prosecutorial discretion-related memoranda

[98] Delegation of Authority to the Assistant Secretary, ICE, Delegation No. 7030.2 (November 13, 2004), delegating, among other authorities, the authority to exercise prosecutorial discretion in immigration enforcement matters (as defined in 8 U.S.C. § 1 10 1 (a)(17).

dated October 31, 2002 and January 8, 2003. The release of the Morton (2011) Memo three years after Congress passed the Military Personnel Citizenship Processing Act (MPCPA 2008), which included deadlines for processing petitions from surviving family members, suggests coordination between USCIS naturalization authorities and USCIS ICE.

A 2010 GAO report provides some insight into why the director of ICE has to reissue guidelines regarding military personnel and family members every three to four years. Reviewing the implementation of MPCPA (2008), the GAO (2010) reported that it was unable to determine the rate for applications from surviving military family members because their applications were "not identifiable in the USCIS's data systems" (GAO 2010, 35). It is difficult to understand why the USCIS cannot identify §329 petitions in their systems because those who apply for citizenship under this provision of the INA must be either active duty service members or (since 2008) a surviving family member of a posthumous citizen. Incidentally, this means that the USCIS also cannot track naturalization petitions filed by any military family members (who apply mostly through the regular statute), let alone the number that have been detained and/or deported. The threat of deportation or actual deportation of military spouses and dependents endangers military readiness because if a service member's primary caregiver for his or her child (spouse, family member) is detained and/or deported, that service member is unable to deploy and may have to be processed for a "hardship" discharge.[99] The Pentagon argues that suspending the detention and deportation of family members enhances military

[99] The author encountered this situation as an officer in the United States Navy, 2003–2005.

readiness by allowing service men and women to focus on mission accomplishment. Policy changes such as these are often criticized as doing an end run around Congress. Other evidence suggests that, at least with this change, executive action is simply the result of congressional inaction.

SUMMARY

Chapters One and Two provided critical background information for this chapter. Chapter One elaborated on the idea *of jus meritum*, or citizenship for service, as both a universal and particularly American concept. Specifically, it argued that the entire citizen-soldier literature is a testament to the instantiation of the principle of *jus meritum* by successive generations of Americans. Chapter Two substantiated this claim, showing how previously marginalized and immigrants groups earned status as free and equal citizens through military service.

This chapter examined how the military operates as a site for political incorporation today, with the aim of informing the reader about the status of alien soldiers, alien veterans, and their families. Without these data, our nation's civilian and military leaders are ill-equipped to address the attendant policy issues. While official data on alien service members are limited at best, Chapter Two drew upon a variety of official and nonofficial sources to provide the most comprehensive account of the practice, experience, and consequences of alien enlistment to date.

The post-9/11 legislative and policy changes regarding alien military service are in line with what we have seen in previous periods of conflict, with some exceptions resulting from a change in military organization and composition. Following other

wartime leaders, President Bush's Executive Order (2002) 13269 made INA §329 applicable to active duty service members; however, unlike earlier periods, the regular Army and Navy were not expanded through a draft.

Table 3.2 summarizes the immigration and naturalization law changes since 9/11. The post-9/11 departures from earlier periods of conflict are largely the result of a change in military demographics (Segal and Segal 2004).[100] The majority of this chapter concerned the impact of the unprecedented needs of "the military family"—unprecedented not because this generation's military families are particularly needy but because they are essentially our first generation of military families. To meet the needs of the population of alien spouses and dependents of alien (and citizen) service members, the Department of Defense expanded its efforts to ensure that all service members become citizens to protect this population from detention and deportation, and to care for the surviving family members of those killed or missing in action. Some of the more creative responses to nascent developments pertain to military families; for example, survivor's benefits—which allow the posthumous citizen to serve as an immigration sponsor—arise from the unprecedented needs of military families.

[100] The composition of the armed forces is affected by larger trends in military organization, i.e., technology, communications, etc., but that is beyond the scope of this study.

Table 3.2: Post-9/11 Changes Regarding Alien Military Service and Naturalization

Statute or Regulation	Major Provisions
2002 Executive Order 13269	Waives residency requirement for aliens on active duty
2004 National Defense Authorization Act (NDAA)	Amends INA §329, implementing EO 13269 (2002) Amends INA §318(d) to allow posthumous citizens (killed or missing in action post-2001) to serve as immigration "sponsor" for surviving spouses, dependents, and parents
2004 Military Naturalization Act (MNA)	Makes citizenship acquired through INA §§328 and 329 subject to revocation (conditional upon 5 years of "honorable" service)
2004 Forman Memo	Directs ICE to exercise "prosecutorial discretion" when issuing removal orders against current and prior members of the military
2006 NDAA	Creates a unified statute for military enlistment (U.S.C.A. § 504(b)(1) by eliminating the peacetime versus wartime distinction; repeals naturalization statutes for the individual services
2008 Kendell Frederick Citizenship Assistance Act	Directs DoD, FBI, and USCIS to expedite and assist alien service members applying for naturalization. Requires USCIS to process applications within 2 years of enlistment
2008 Military Personnel Citizenship Processing Act	Requires USCIS to process and adjudicate military naturalization petitions (including families) within 6 months.
2008 Military Accessions Vital to the National Interest (MAVNI) Program	Pilot program that allowed the enlistment of 1,000 legally present non-legal permanent residents (LPRs) with critical skills, i.e., fluency in a "strategic language," US-licensed health care providers. Suspended in 2015.
2011 Morton Memo	Directs ICE to exercise "prosecutorial discretion" with "particular case and consideration to veterans and members of the US armed forces"
2012 Napolitano Memo	Directs DHS to exercise "prosecutorial discretion" when issuing removal notices to certain young undocumented aliens

Sources: GAO 2010; Lee and Wasem 2009; Stock 2011.

Some issues remain, despite these changes to the immigration and naturalization regime in response to the military needs of the state. For example, there is no official policy regarding what to do about undocumented soldiers discovered on active duty (Traskey 2003). The publicized cases of undocumented service members who were discovered on active duty are instructive because none of the soldiers volunteered this information to military officials.[101] The favorable outcomes in certain cases, as with Private Escalante, are no guarantee of similar treatment under different circumstances. No formal policy exists regarding how to handle undocumented persons discovered on active duty. Congress must adjudicate the final status of persons not legally present in the United States, including the potential DREAM Act population. Counting aliens—undocumented or not—alongside citizens as potential soldiers by requiring them to register with the Selective Service is an interesting approach but does not appear to have political implications (Carson 2006; Plascencia 2009; Raskin 1993; Wong and Cho 2006). Perhaps the institution of the all-volunteer force has shielded the majority of the public from the reality of alien service members and their precarious status under current law (Burk 2001; Cohen 2001; Moskos 2001, 2002).

Although the military has recently taken steps to ensure that all enlistees obtain citizenship, the status of active duty aliens, veterans, and their families among the great mass of US citizens-never-to-be-soldiers challenges the foundations of the American political order. Alien veterans are but one result of the separation of citizenship and

[101] As discussed above, the reluctance of undocumented aliens on active duty to volunteer this information to military commanders is a rational response in an environment of high uncertainty (Lamm 2010). Until the early 2000s, most service members in such situations have been prosecuted for fraudulent enlistment under articles 83 and 84 of the UCMJ.

military service since Vietnam, which led to a laissez-faire approach to citizenship and an embarrassingly low 40 percent rate of active duty naturalization through 2004 (Hattiangadi, et al. 2005). Congress must devise solutions for emerging problems and address the unintended consequences of piecemeal, politically motivated amendments to the INA that left some alien veterans without a path to citizenship.

In the post-9/11 as in the Cold War period, Congress and the president continue to pursue gradual immigration and naturalization policies that further the national interest in explicitly military terms. For example, the National Defense Authorization Act (NDAA) of 2008 contains a provision allowing for the immigration and naturalization of certain Iraqis and Afghans who assisted US forces in the post-9/11 period. Like the 2000 Hmong Act, the 2008 amendments invite these foreign nationals to pursue US citizenship regardless of nationality, previous residence, and family ties. All that is required is a record of military service to the United States and its allies. In all such cases, individual action and merit mark these foreigners as semi- or proto-American. Congress acknowledges and rewards the service of these foreign nationals with no ties to the United States through special provisions in the nation's immigration and naturalization code.[102]

The president's ability to provide relief in exceptional circumstances through parole powers can be checked by opposition from Congress. During the Cold War

[102]However, the case of Iraqi Chaldeans is one notable exception. This population demonstrates one group for whom the United States incurred obligations in Iraq that have since gone unfulfilled. The author encountered the case of Iraqi Chaldean refugees in the Hutto detention center, near Austin, Texas. The Chaldeans were a religious minority living in Iraq targeted for ethnic cleansing following the US invasion in 2003.

exceptional Presidential relief was codified by Congress. For example Tichenor (2002) notes that President Reagan's admission of refugees fleeing communist regimes was generally supported by "Democratic lawmakers and liberal interest groups" (266). In the post-Cold War era, where refugee policy is not cast as an aspect of national security policy, President Obama's attempt to regularize the status of an entire classes of persons, such as the population of undocumented minors, has been successfully thwarted by Congress.

The wars in Afghanistan and Iraq have served as a focusing event, highlighting the disconnect between American ideals and practice—in this case, between the families of alien soldiers and an immigration system that cannot even identify their citizenship petitions or track how many citizenship-eligible alien veterans have been deported (Pierson 1993).[103] While the practice of awarding posthumous citizenship is problematic for liberal theory, it is an official effort by the government of the US to meet its obligation to the families of the fallen, although exactly what that obligation is remains unspecified. Nevertheless, the history of *jus meritum* demonstrates that the US has a largely inclusive and expansive immigration system (Freeman 1995).

[103] This reference is to USCIS's inability to track the naturalization petitions of alien military spouses and dependents or the number of alien veterans deported.

Chapter Four

Contemporary Public Support for Citizenship for Service

This chapter moves from historical, theoretical, and policy analysis to contemporary empirical analysis of how the present-day public views *jus meritum*. Understanding these perceptions is particularly relevant to the current debate over the appropriate direction and scope of immigration policy reform. Specifically, this chapter analyzes original polling data on the DREAM Act, a proposal to allow undocumented persons brought to the United States before the age of 16 to become legal residents if they graduate from high school, remain free of legal trouble, and go to college or join the military. All previous polling on the DREAM Act in that it asked people if they supported a path to citizenship for undocumented immigrants in exchange for military service or college attendance. The original research described here provide the first data to evaluate public support for the military and college provisions of the DREAM Act separately. A disparity in support between the two provisions, especially greater support for the military than the college provision, may evidence contemporary public support for the *jus meritum* principle.

OVERVIEW

In the following sections, I present the basic theories behind individual attitudes toward immigrants and immigration policy. None of the existing theories fit the alien soldier scenario, although they might predict support for other types of immigration

policy. Since the military is not generally regarded as difficult to enter, it does not make sense that respondents would oppose alien enlistment on economic grounds. In addition, given the history of alien military service outlined in Chapter Two, it is difficult to sustain the argument that immigrants that volunteer for military service threaten the nation's cultural or political identity.

Next, I discuss the context and importance of the DREAM Act, including a summary of legislative action. This section is followed by a description of the data, methods, and presentation of results. The data show more support for granting legal residency to those who join the military than to those who attend college. Significant variation in support for the military and college provisions are explored, and areas for further research identified. Finally, I relate the importance of these findings to the larger study of *jus meritum*.

THEORIES OF IMMIGRATION AND IMMIGRATION POLICY ATTITUDE FORMATION

Political scientists have proposed a number of theories to explain the distribution of public opinion toward immigrants and immigration policy. These theories can be organized along two dimensions: economic versus noneconomic and individual versus collective interests. Scholars have explored and tested theories of both individual and collective economic interests, especially those involving threats to cultural and national identity.

First, political scientists have amassed data linking individual economic self-interest to public attitudes toward immigrants (Burns and Gimpel 2000; Jackson and Esses 2000). For example, the economic threat theory has been used to explain why

"high-skilled respondents"—members of the public in high-skilled occupations—are more supportive of immigration than their "low-skilled" counterparts. This theory predicts that the respondent's (occupational) skill level is related to the type of immigration that he or she supports or opposes, i.e., high-skilled Americans would oppose high-skilled immigrants and low-skilled Americans would oppose low-skilled immigration because of competition for jobs (Mayda 2004; Scheve and Slaughter 2001).

Another general theory of attitudes toward immigrants, the collective impact theory, involves the perceived collective economic impact of newcomers on US society (Kiewiet and Kinder 1981; Mansfield and Mutz 2009; Mutz. 1992). According to this theory, individual beliefs regarding immigrants' economic impact are more significant than individuals' direct experience with such impact (i.e., competing with immigrants for jobs). As proof of this argument, proponents of the collective impact theory have more recently pointed to data showing that both high- and low-skilled respondents support the immigration of highly skilled immigrants (Hainmueller and Hiscox 2010). These proponents posit that the lack of variance in immigration attitude based on respondents' skill level demonstrates that public opinion is primarily structured by perceptions of how policies affect the US economy as a whole, rather than actual data or lived experiences. Scholars have also adapted the collective impact theory to explain anti-immigrant attitudes as the result of perceived competition for state welfare expenditures (but see Facchini and Mayda 2009 on the relationship among immigrants' skill level, labor market determinants, and redistributive economics on individual attitudes toward immigration).

Finally, many theories and data support the idea that attitudes are based on the perceived threat of immigrants to American cultural and national identity. Unlike the individual and collective self-interest theories, these theories argue that attitudes toward immigrants are structured by ideas rather than material concerns—as with perceived threats to national and cultural identity (Chandler and Tsai 2001). Scholars rarely argue that public attitudes toward immigrants and immigration policy are driven exclusively by economic interest; instead, they generally acknowledge that such attitudes are also influenced by noneconomic ideational concerns and/or self rather than collective interests (Citrin and Green 1990; Chandler and Tsai 2001; Kessler 2001).

Public polling on the DREAM Act provides an opportunity to test these various theories of attitude formation towards immigrants and immigration policy. Understanding what underlies public support for or opposition to the DREAM Act is also important because it likely affects the bill's ability to become law. The DREAM Act raises its own set of complexities with regard to immigration because it concerns undocumented immigrants brought to the United States as children as opposed to immigrants who came to the country illegally as adults. Generally, the public provides greater support to integrating the undocumented children of immigrants because these children are not morally responsible for their illegal presence in the United States. Supporters of pro-immigrant immigration reform have strategically placed the DREAM Act first on the agenda for this reason (Stock 2012).

How do the arguments underlying the DREAM Act relate to these theories on attitudes toward immigrants and immigration policy? The standard theories suggest that

low-skilled respondents (measured by proxy using the education and income variables) will be less supportive of the DREAM Act due to economic competition. As such, the economic competition model might explain opposition to the citizenship for college provision, but not citizenship for military service. The Services do not turn away qualified applicants because too many people want to enlist. Therefore, we have no reason to believe that low-skilled respondents will be any less supportive of immigrants gaining citizenship through military service than their high-skilled counterparts.

The economic competition model thus does not apply to the case of military enlistment because, for the most part, every qualified volunteer is enlisted. The mechanism underlying this theory, individual material self-interest, could still predict support for the DREAM Act's military provision if respondents believed that noncitizen enlistment allows the United States to maintain an all-volunteer force (this perception, although widespread, is erroneous). The respondent's belief that noncitizens prevent the reestablishment of compulsory military service during wartime may be based on individual material self-interest.

Scholars have also found that higher education levels correlate to support for immigration through a separate mechanism—what I'll call the "education educates" hypothesis (Burns and Gimpel 2000; Hainmueller and Hiscox 2010; Jackson and Esses 2000). This phenomenon can perhaps be explained by the assumption that those with more education likely spend more time in environments that support diversity and tolerance. Those with more education may have greater awareness of the effect of previous waves of immigrants on the United States, making them less fearful of the

supposedly negative impact that immigrants are perceived to have on culture, identity, and the national economy. For this reason it is important to also ask respondents how whether or not they think immigration is a good thing for the country in general.

THE DREAM ACT

The DREAM Act, formally the Development, Relief, and Education for Alien Minors Act, failed to pass the "lame-duck" Congress in December 2010. Then, in June 2012, Secretary of Homeland Security Janet Napolitano issued a memo titled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" that directs US Citizenship and Immigration Service (USCIS) officials to exercise prosecutorial discretion with regard to certain young aliens unlawfully present in the country (Napolitano 2012). As discussed in the previous chapter, the criteria for eligibility per Napolitano (2012) are nearly identical to the those of the 2003, 2007, and 2009 DREAM Act legislation: each iteration allows undocumented immigrants brought to the United States as children to gain legal resident status if they graduated from high school, stayed out of legal trouble, and attended college or joined the military.[104] The Napolitano (2012) action is sometimes referred to as the DACA program, for deferred action for childhood arrivals.

104 To qualify, a person must be an undocumented alien who came to the United States before the age of 16, has continuously resided in the United States for five years preceding June 15, 2012. The applicant may not above the age of thirty and must be in school, have a HS diploma or GED, or is "an honorably discharged veteran" of the Coast Guard or Armed Forces of the United States. The applicant may not have been convicted of a felony, a significant or several misdemeanor offenses, or otherwise "pose a threat to national security or public safety" (Napolitano 2012, 1).

A December 2010 Gallup poll found that 54% of Americans supported a proposal to "allow illegal immigrants brought to the US as children to gain legal resident status if they join the military or go to college," whereas 42% was opposed.[105] This poll found greater support for the act among the following demographics: Democrats by a 2:1 margin, youth (those under 35) by a 2:1 margin, and the highly educated. The largest gap in support is between those with a high school education or less, 44% of whom support the Act, and those with some college, 57% of whom support it. In the same Gallup survey, those with postgraduate education favored the Act by a 2:1 margin.

Supporters of the DREAM Act point to a blameless population: those brought to the United States by their parents as children. Many of them are of Mexican origin but have little or no memory of Mexico, have attended school only in the United States, and have been socialized as American teenagers. In addition, many of these children may only speak English, depending on their family. Opponents to the act generally focus on the requirement that the person attend college in exchange for legal residency. Many people do not consider going to college to be a contribution commensurate to achieving legal residency. I have never heard a politician or commentator argue that active duty (military) service fails to establish justification for legal residency and eventual citizenship—although it is likely that certain individuals do hold that viewpoint. In fact,

105 Gallup found that 54% would "vote for" such a law, 42% would "vote against," and 4% had "no opinion." Gallup News Service (2010) results are based on a random quarter-sample on four nights of the Gallup Daily tracking survey. Gallup Daily randomly samples all adults (18+) living in the 50 states and the District of Columbia. This survey (n = 1,003) was conducted 3–6 December 2010. Random-digit dial sampling includes both landlines and cell phones. The margin of error (with 95% confidence) for the total sample is +/- 4 percentage points. www.gallup.com.

while it remains divided on immigration policy as a whole, the public overwhelmingly supports awarding citizenship to active duty service men and women.

As discussed in the previous chapter, from 2013 to 2014, the Department of Defense has allowed active duty soldiers who were not legally present at the time of enlistment to remain on active duty and acquire citizenship. Formerly, active duty members discovered in this predicament faced courts-martial, deportation, and a permanent bar from ever seeking US citizenship (the deportation and immigration bar came from federal immigration law, not the military justice system). The Pentagon has since accepted the interpretation of President Bush's 2002 Executive Order 13269—making all noncitizens on active duty post 9/11 immediately eligible for citizenship—as applicable to legal and illegal immigrants alike because illegal immigrants were not specifically excluded. Finally, the practice of awarding posthumous citizenship to service members killed in Afghanistan, Iraq, and elsewhere suggests that the American people and elected officials view military service as a public contribution worthy of awarding citizenship.

It is reasonable, then, to believe that military service is perhaps the only politically acceptable way of integrating undocumented immigrants into American society. Defense Secretary Robert Gates openly supported the DREAM Act before Congress (before it was voted down), and military and civilian leaders responsible for maintaining the all-volunteer service continue to support efforts to enlist all qualified persons, regardless of citizenship status. However the act has never been proposed as a military only option; attending college has always been presented as an analogous civil

contribution. There is good reason to believe that there is more support for granting citizenship to those that enlist than to those who attend college. Because previous public polls on the DREAM Act are limited in asking about support for both joining the military or going to college (taken from the legislative proposal), the difference in public opinion regarding the military versus college option has been impossible to verify. Immigration reform—including what to do about the potential DREAM Act population—will continue to resurface as a political issue, warranting the effort to understand what structures attitudes toward immigration and immigrants. The polling data analyzed in this chapter provide the first opportunity to confirm the hypothesis that the public supports the military more than the college provision of the proposed DREAM Act.

TEXAS POLITICS SURVEY

This section analyzes data from the May 2011 Texas Politics Survey, conducted by the University of Texas at Austin/Texas Tribune. Eight hundred registered voters in the state of Texas were surveyed between 11 and 18 May 2011. The survey instrument, codebook, and results are available on the Texas Politics Project website. The survey results have an overall margin of error of 3.46%. The descriptive statistics for the dependent and independent variables, as well as cross tabulations, are contained in Appendix C.

At the request of the author, the May 2011 Texas Politics Survey asked people about support for a path to citizenship for undocumented immigrants in exchange for military service and college attendance. The May 2011 survey was the first to query the public about the military and college provisions separately.

The Texas Politics Survey's design affords a more sophisticated analysis of public opinion toward the DREAM Act by specifically allowing for comparison among respondents who support one, both, or neither provision. The next section discuss the statistical analyses of these data using an OLS regression on support for the military and college provisions of the DREAM Act. This section is followed by discussion of the results, including a number of cross tabulations of the DREAM Act support by independent variables of interest.

DEPENDENT VARIABLE

The dependent variable (DV) is support for the DREAM Act provisions. The DV was measured on a 5-point scale (1 = strongly support, 2 = somewhat support, 3 = don't know, 4 = somewhat oppose, 5 = strongly oppose) and was based on responses to the following.

> Q31. Please indicate your opinion on the following immigration proposals. [Randomize a-b][106]
>
> > Q31a. Passing a law that would allow illegal immigrants brought to the U.S. as children to gain legal resident status if they join the military.
> >
> > Q31b. Passing a law that would allow illegal immigrants brought to the U.S. as children to gain legal resident status if they go to college.

106 The Texas Politics Survey data do not include a question order variable (to indicate in what order respondents were asked the military versus college provision) so the effect of randomization could not be tested.

Table 4.1 summarizes the sample's responses to question 33a-b, used as the dependent variable in the statistical analysis below.

Table 4.1: Support for the Military and College Provisions of the DREAM Act

	Military (n=797)	College (n=798)
Strongly support	25%	16%
Somewhat support	34%	20%
Somewhat oppose	12%	13%
Strongly oppose	25%	45%
Don't know	5%	6%

Source: May 2011 Texas Politics Survey

Independent Variables

The models evaluate individual-level determinants of factors believed to affect support for immigration. The independent variables (IVs) included in the models are as follows.

Age is a continuous variable. Age is hypothesized to negatively affect support for both provisions of the DREAM Act since the immigration literature records that older citizens are more opposed to increasing immigration than younger citizens.

Gender is a dichotomous variable. Although gender has not been shown to systematically affect attitudes toward immigration it was included because military service is a traditionally male-dominated profession. For this reason, there may be politically significant differences in support for the military versus college provisions of the DREAM Act that have not been documented or theorized by immigration scholars.

The respondent's race/ethnicity is included to test for differences among three main groups: (Non-Hispanic) Whites, (Non-Hispanic) Blacks, and Hispanics/Latinos. Non-Hispanic Whites comprise the majority (63%) of the sample so it serves as the reference group. Dummy variables for Blacks, Hispanics, and Other (including Asian/Pacific Islander, Native American, and Mixed) are used to measure variance by race and ethnicity in the OLS regression.

Education is measured on a 6-point scale by the respondent's "highest level of education" (1=less than high school, 2=high school degree, 3=some college, 4=two-year college degree, 5=four-year college degree, and 6=post-graduate degree). As discussed in the previous section, the literature demonstrates that education positively affects attitudes toward immigration. One theory is that individuals with more education are more knowledgeable of the history of the US as a nation of immigrants. Others account for variance by education to economic competition, i.e. those with less education will oppose increased immigration because they will have to compete with (mostly unskilled) immigrants for jobs. Analyzing support for the military and college provisions of the DREAM Act separately provides a unique opportunity to assess the impact of education on immigration attitudes.

Party identification is a 7-category variable that measures responses to the question "Generally speaking, would you say that you usually think of yourself as a…" and several follow-up questions. Democrats were expected to be more supportive of the DREAM Act provisions than Republicans and Independents.

Finally, a Catholic dummy variable is included due to the Church's official position, generally regarded as pro-immigrant, especially in the southwestern region of the United States. Religion or Catholicism in particular has not been shown to systematically affect attitudes toward immigration.

An Ordinary Least-Squares (OLS) regression is used to model the predictors of support for each provision of the DREAM Act. An OLS regression is appropriate to model support for each dependent variable– support for the military and college provisions, respectively— measured on a 5 point scale. The OLS regression assesses whether or not an independent variable predicts the dependent variable and measures the strength of the relationship between each DV and the IVs. Each DV, support for the military or college provision, requires a separate regression.

RESULTS

Table 4.2 shows the results of the OLS regression on support for each of the DREAM Act provisions. The age, gender, education, race (other), and Catholic variables do not significantly predict support for either provision. Education predicts support for the college but not the military provision. Party identification is also statistically significant in the expected direction. The race/ethnicity dummy variables are also of interest. First, the Black dummy variable negatively affected support for the military

provision but was not significant in the college model. Second, the Hispanic dummy positively affected support for the college provision but was not significant in the military model. The Other (Race) dummy was not significant in both the military and college models.

Table 4.2 OLS Regression of Support for DREAM Act Provisions

	Military		College	
	Coef.	SE	Coef.	SE
Sex (Male)	-0.052	(0.109)	-0.193	(0.104)
Age	0.005	(0.004)	-0.004	(0.004)
Education	0.055	(0.041)	**0.078 ****	**(0.039)**
Black	**-0.496 *****	**(0.187)**	-0.277	(0.178)
Hispanic	0.143	(0.167)	**0.659 *****	**(0.159)**
Other (Race)	-0.342	(0.221)	-0.127	(0.211)
PID (1=Strong Republican, 7=Strong Democrat)	**0.206 *****	**(0.026)**	**0.303 *****	**(0.025)**
Catholic	0.003	(0.159)	0.015	(0.151)
Constant	2.161	0.294	1.310	0.281

* < 0.10, ** < 0.05, *** < 0.01

Source: Texas Politics Survey May 2011

DISCUSSION

Some results yielded from the military and college models were expected and others were surprising. One important insight gained from this analysis concerns the general pattern of support—specifically, the roughly equal size of both, either, and neither support groups—that previous surveys could not capture. All previous public opinion polling on the DREAM Act queried people about support for a path to citizenship for undocumented immigrants in exchange for military service or attending college. The regression results show that dichotomizing the dependent variable or asking about the "college or military provision" together oversimplifies public attitudes. The May 2011 Texas Politics Survey design demonstrated the importance of asking specific, separate questions. These data show that roughly an equal number of respondents supported both (n = 260) and neither provision (n = 276); the remainder supported either provision (n = 231; 202 of these were military only).[107]

The results of the OLS regression on support for the military and college provisions led to a closer examination of the race/ethnicity variables. In particular, it is interesting that the Black dummy variable is significant and negative for the military provision and insignificant in the college model, while the Hispanic dummy is positive for the college provision and insignificant in the military model.

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[107] The models were chosen so that respondents who indicated "don't know" could be included in the analysis by recoding them to the middle of scale (3 on the 5-point scale). A total of 5% of respondents indicated "don't know" on the two provisions—2% on the military provision and 3% on the college provision. Further analysis on the "don't know" respondents would be useful.

Since the Black, Hispanic, and Race (Other) variables are dummy variables a cross tabulation of each race/ethnicity variable by support for the military and college provisions was performed. A Pearson's Chi^2 test evaluates whether or not two variables are related (statistically significant). This test is appropriate for variables whose values are mutually exclusive, as is the case for respondents' support for the DREAM Act provisions and the Race/Ethnicity dummy variables.

In the OLS regression, the Black dummy variable negatively affected support for the military provision but was insignificant in the college model. To better understand this relationship, a cross tabulation of the Black dummy variable and Military and College provisions was performed (Tables 4.3 and 4.4). The Pearson Chi^2 test indicates that the Black dummy and the military and college provisions are not significantly related in the cross tabulation.

Table 4.3: Cross tabulation of Black by Support for the Military Provision[108]

	Support for Military Provision					
	Strongly Oppose				Strongly Support	
	1	2	3	4	5	Total
Not Black	24%	11%	3%	35%	26%	100%
Black	2$%	9%	8%	29%	29%	100%
Total	24%	11%	4%	34%	27%	100%

Pearson $Chi^2(4) = 6.3790$ Pr = 0.173

Source: May 2011 Texas Politics Survey

[108] The row percentages for tables 4.3 – 4.6 are rounded for readability. For this reason, the cells may not add to 100. The exact row percentages and cell counts for the cross tabulations appear in Appendix C.

Table 4.4: Cross tabulation of Black by Support for the College Provision

Support for College Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Not Black	47%	13%	5%	18%	17%	100%
Black	35%	10%	5%	28%	21%	100%
Total	45%	12%	5%	19%	18%	100%

Pearson $Chi^2(4) = 7.7623$ Pr = 0.101

Source: May 2011 Texas Politics Survey

Tables 4.5 and 4.6 contain the cross tabulation of the Hispanic dummy variable and support for the military and college provisions. As in the OLS regression, cross tabulation of the Race/Ethnicity variables indicated a statistically significant relationship between the Hispanic identifier and support for the college but not the military provision.

Table 4.5: Cross tabulation of Hispanic by Support for the Military Provision

	Support for Military Provision					
	Strongly Oppose				Strongly Support	
	1	2	3	4	5	Total
Not Hispanic	26%	11%	4%	35%	25%	100%
Hispanic	18%	11%	4%	33%	34%	100%
Total	24%	11%	4%	34%	27%	100%

Pearson $Chi^2(4) = 6.9957$ Pr = 0.136

Source: May 2011 Texas Politics Survey

Table 4.6: Cross tabulation of Hispanic by Support for the College Provision

Support for College Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Not Hispanic	50%	12%	5%	18%	15%	100%
Hispanic	23%	16%	6%	26%	30%	100%
Total	45%	12%	5%	19%	18%	100%

Pearson $Chi^2(4) = 37.2132$ Pr = 0.000

Source: May 2011 Texas Politics Survey

There were too few respondents who identified as "Other" Race to evaluate the relationship between Other and support for the military and college provisions.

The other major finding from the OLS regression is that support for both the military and college provisions of the DREAM Act are related to party identification. A Pearson Chi^2 test for statistical significance indicated that (Democratic) party identification is related to support for both the military and college provisions.[109] While this finding is not surprising – indeed this relationship was hypothesized on the basis of previous research that found Democratic Party identifiers are more supportive of

[109] The cross tabulations of party identification by the military and college provisions are contained in Appendix C.

increased immigration than Republicans and Independents –it begs the question of whether or not party identification can account for attitudes toward immigration generally.

Another variable from the same survey was used to explore whether or not support for the college and military provisions is related to other attitudes on immigration. This second immigration policy variable, Immigration Approval, is constructed from responses to the question, "On the whole, do you think immigration is a good thing or a bad thing for this country today?" Of the May 2011 sample of Texas registered voters 42% said immigration was a "good thing" and 44% said it was a "bad thing," 14% undecided (Texas Politics Survey 2011). Immigration Approval is too highly correlated with party identification to be included as a separate independent variable in the OLS regression on support for the military and college provisions, however it does provide a second reference point for exploring the contours of support for the military and college provisions of the DREAM Act.[110]

Tables 4.7 and 4.8 present the cross tabulations of Support for the Military and College Provisions by Immigration Approval.[111] The Pearson's Chi^2 test indicates that Immigration Approval is related to support for both provisions. The value of Chi^2

[110] Descriptive statistics for this question, Immigration Approval, and the cross tabulation of the 7 point Party Identification by Immigration Approval are located in Appendix C. The immigration approval question was asked after the DREAM Act questions.

[111] The cross tabulations presented in Tables 4.7 and 4.8 contain the original variable for Immigration Approval by Support for the Military and College Provisions. Appendix C also contains the cross tabulations for the Immigration Approval variable with the "Don't Know" responses recoded as missing. The recoded Immigration Approval variable is related to support for the Military and College provisions, although the value of Chi^2 is lower (for both).

suggests that a view of immigration as a “good thing” has a larger effect on support for the college than on support for the military provision (Immigration Approval by College Provision Chi^2=203.1070 versus by Military Provision Chi^2=132.6894).

Table 4.7: Cross tabulation of Immigration Approval by Support for the Military Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Good Thing	13%	10.%	2%	35%	39%	100%
Bad Thing	38%	11%	2%	33%	15%	100%
Don’t Know	1%	10%	17%	35%	24%	100%
Total	24%	11%	4%	34%	27%	100%

Pearson Chi^2=132.6894 Pr= 0.000

Source: May 2011 Texas Politics Survey

Table 4.8: Cross tabulation of Immigration Approval by Support for the College Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Good Thing	26%	14%	4%	22%	34%	100%
Bad Thing	68%	10%	3%	14%	4%	100%
Don't Know	32%	15%	16%	28%	9%	100%
Total	45%	12%	5%	19%	18%	100%

Pearson Chi^2=203.1070 Pr= 0.000

Source: May 2011 Texas Politics Survey

The cross tabulations of the Immigration Approval variable indicate that support for the military and college provisions of the DREAM Act is related to other immigration attitudes. The effect of a positive view of immigration is more strongly related to support for the college than the military provision. These data may support the idea that *jus meritum* is distinct from immigration policy proposals in the eyes of the public. At a minimum, we can say that there is greater support for the military than the college provision of the proposed DREAM Act and that public support for these provisions, like other immigration proposals, is strongly correlated with party identification.

SUMMARY

The public's greater support for the military compared to the college provision of the DREAM Act is the most important finding of this analysis. This reveals that the college and military options are not equivalent in the eyes of the public. Although more data are needed to confirm these findings, the observed gap suggests that there is something distinctive about military service. One explanation could be that the public is knowledgeable about the history of alien military enlistment and naturalization, which was discussed in chapter two; however, this is unlikely given the dearth of scholarship about the practice, and the absence of *jus meritum* from the citizenship and nationality literature. Nevertheless, the public's support for the military provision may reflect the more general importance of the citizen-soldier tradition in the United States, which is well documented in the civil-military relations literature. The next chapter considers the implications of the DREAM Act poll findings for the larger study of *jus meritum*.

The OLS regression on the May 2011 Texas Politics Survey data suggests that Blacks are less supportive of the military provision of the DREAM Act than the average (non-Black) respondent and Hispanics are more supportive of the college provision than the average (non-Hispanic) respondent. While Hispanic support for the college provision can be accounted for as the perception of the DREAM Act as college for Hispanic/Latinos, it is not clear why this population would oppose the military provision. It is also worth remembering that Hispanic/Latino identity has not been shown to systematically affect attitudes toward immigration in previous studies. Similarly, it is not clear why Black respondents would oppose the military provision. An extension of the

economic competition model might explain this pattern if respondents thought that allowing undocumented minors to enlist in the military would reduce opportunities for potential Black enlistees – although, as previously discussed, the military is not generally regarded as difficult to enter. The data analyzed here are unable to confirm these hypotheses. Further research and data are needed to understand variation in support by race and ethnicity. Specifically, data from a representative national sample would provide a useful point of comparison. Such additional polling data could confirm the overall disparity in support for the military and college provisions of the DREAM Act and the variation by race and ethnicity in support for the provisions captured in the May 2011 Texas sample analyzed above.

Chapter Five

Conclusion

OVERVIEW

This dissertation examined the practice of granting citizenship in exchange for military service. As I have discussed throughout these pages, the general process is quite simple: political incorporation is the secondary consequence of "casting a wide net" for mobilizing resources during crisis periods (Sparrow 1996). The state's immigration and naturalization regime is liberalized to meet the demands of the crisis and, despite efforts to restore a more restrictive regime during peacetime, veterans often use the great rhetorical power of military service to convert their wartime contribution to political gains (Krebs 2006). Since the Civil War every Congress has made provisions for military naturalization either during or after periods of armed conflict. The intervention of Congress in ensuring the acquisition of citizenship for military personnel and veterans stands in stark contrast to the federal government's general deference to the authority of states in determining residency and citizenship qualifications.

Before discussing the implications of this study for the literature, two observations from the policy analysis chapters bear repeating. First, prior to the Civil War, citizenship substantially meant state citizenship. Some scholars even define the Civil War as America's Second Founding because the idea of national citizenship came into being during the 1861–1865 war and the period of Reconstruction that followed

(Ackerman 1998). For much of American history, naturalization was decentralized and largely governed by the states. The concept of US citizenship is coincident with the Civil War military naturalization statutes. Indeed, the proto-citizen-soldier is so central to the concept of US citizen that the federal agency charged with drafting a uniform Oath of Citizenship for the United States in the 1920s borrowed language from Military Oaths of Enlistment.[112]

The second observation from the historical data presented in Chapter Two is that the policy of granting citizenship for service appears across different eras of American political development. There are striking similarities among the military naturalization statutes from the Civil War through the post-9/11 period. On the basis of these historical data alone, one might reasonably infer that the principle of *jus meritum* is a foundational principle for political membership in the United States. *Jus meritum* is best understood as a subset of naturalized citizenship acquired through military service rather than residency.

However, this dissertation goes beyond theoretical and historical policy analysis to examine contemporary polling data in order demonstrate the public's continued support for *jus meritum*. The statistical analysis of the DREAM Act polling data presented in Chapter Four buttresses the argument that the policy of granting citizenship in exchange for military service has strong support even when the public remains divided on immigration policy in general and even among publics that are considered most hostile to increasing opportunities for newcomers.

[112] The Military Oaths of Enlistment and the US Citizenship Oath can be found in appendices A and B, respectively.

This chapter discusses this study's findings for theories of citizenship, the politics of immigration and immigrants' rights, and civil-military relations in the United States. It concludes by identifying some areas for future research.

IMPLICATIONS FOR THEORIES OF CITIZENSHIP AND CITIZENSHIP POLICY

This study's most important claim regarding theories of citizenship is that the traditional principles of political membership based on parentage and place of birth do not represent the full scope of citizenship policy in the United States. Especially in regard to the subset of naturalized citizenship, *jus meritum* is an essential element of how newcomers come to be recognized as equal members of the political community. *Jus meritum*, as a mode of political incorporation, also plays a central role in state-building. Chapter Two articulated this argument using historical data that show how, at critical moments, the government of the United States has made special provisions for the incorporation of foreigners willing to further its military interests.

The argument that political membership based on accident of birth is in some ways inconsistent with American identity can also be made on theoretical grounds. There is no consent, right of conscience, or individual choice when membership is assigned at birth. *Jus meritum*'s emphasis on individual choice is at odds with the European principles of *jus soli* and *jus sanguinis,* which place the sovereign or state at the center of analysis. In this sense, the principle of *jus meritum* might be described as the most American of the principles used to determine membership in a political community.[113]

[113] Elizabeth Cohen (2009) introduced the concept of *jus tempus*, which is similarly liberal in that it places more weight on events after birth and choices in adulthood to determine allegiance and political

Political theorists, among others, are interested in how and why different concepts of membership and modes of incorporation resonate more strongly in some civic cultures than in others. Contemporary public support for US political incorporation through military service may be due to popular knowledge of the military path as a historical path to citizenship. The polling data analyzed in the previous chapter are unable to tell us why people are generally more supportive of the military than the college provision of the DREAM Act. Some might argue that the practice of alien enlistment has not been sufficiently examined by the public. However, the Civil War, WWI, and WWII draft statutes examined in Chapter Two suggest that civilian and military leaders, as well as the public, were aware of the potential and actual contributions of alien residents to the national war effort. A preponderance of evidence suggests that Congress intentionally included aliens in both the population of draft-eligible persons and those eligible to enlist as volunteers when not conscripted. The incorporation of aliens through military service is an intentional, long-standing feature of American citizenship policy.

Conceptualizing *jus meritum* as an independent path to political inclusion alongside the principles of parentage and place of birth does more than get the historical story right. Persons that acquire citizenship through military service have been the subset of naturalized citizens most welcomed by the native-born population. It may be that

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membership. For example, in determining whether an individual's claim to membership in the Early Republic should be recognized, *jus tempus* asks if a person remained in the States throughout the Revolutionary war and whether he resided in the territory before and after the ratification of the Constitution. *Jus meritum*, on the other hand, interprets an individual's action as a demonstration of allegiance; i.e., did this person join the Continental Army or aid the British? *Jus tempus* and *jus meritum* place a greater weight on individual behavior, especially in adulthood, than on circumstances of birth. While both *jus meritum* and *jus tempus* recognize individual choice, the principle of *jus tempus* is more consistent with contemporary theories of liberalism that emphasize private behavior over public responsibilities.

military service is easily identified as a contribution to the community, whereas civilian contributions are more difficult to conceptualize. It should be noted, however, that citizenship and inclusion of alien soldiers is a secondary consequence of enlisting all available persons during wartime. The military service of aliens and racial/ethnic minorities helped erode ascriptive (racial and ethnic) restrictions on citizenship but this adjustment was an unintended effect of national policy during a crisis period.

Through what Ronald Krebs (2006) describes as "rhetorical coercion," racial and ethnic minorities effectively leveraged their veteran status to push for political and social equality.[114] The study of these processes and their effects broadens our understanding of American political development by showing how history is more than just the backdrop. This history provides the template for newcomers to challenge the status quo. However, this history alone does not explain why the practice persists. For example, there are other aspects of the history of immigration and patterns of assimilation in the United States, such as active efforts to restrict immigration to Northern European, English-speaking, and Protestant peoples that were eventually rejected as un-American (Smith 1997). The more compelling question is why the practice of alien enlistment and naturalization continues whereas other practices were successively rejected.[115]

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[114] Krebs' (2006) mechanism of "rhetorical coercion" is focused on the effect of alien military service on the public at large, similar to what Parker (2009) describes with regard to African-American citizen veterans of WWII, their wives and widows. In contrast, Mettler's (2002, 2005) study of this same population focuses on how military service and veteran status (particularly their participation in the GI Bill program) affected the political expectations of these former service members. While Krebs (2006) and Parker (2009) focus on how the fact of minority military service was used to change the minds of the dominant community, Mettler (2002, 2005) examines how these experiences affected the veterans themselves.

[115] Political scientists writing in the mid-twentieth century looked over the course of American political history- the lifting of property restrictions on suffrage eligibility following the war of 1812, the

Alien military naturalization takes on special importance in the United States given that it is a nation of immigrants that is defined by adherence to certain principles rather than to a shared racial and ethnic history. The rhetorical value of military service is heightened by a civic culture committed to liberalism. Incorporation through military service is neither liberal nor necessarily exclusionist, although the history of military enlistment regulation is littered with racial and ethnic restrictions.

The naturalization of alien soldiers is an example of an inclusive, civic republican strand of American identity that Rogers Smith (1997), in his discussion *Civic Ideals*, leaves room for but does not identify. Similarly, in her seminal work on American citizenship, Judith Shklar (1991) cites the "overt rejection of hereditary privileges," specifically through the abolition of chattel slavery, as pivotal to the realization of political equality in the United States (1). Noncitizen military service has important implications for how we think about American citizenship, which has long been identified with individualism, merit, and classical liberalism.

IMPLICATIONS FOR THEORIES OF IMMIGRATION AND IMMIGRANTS' RIGHTS

This dissertation makes two important contributions to the study of immigration politics: it critiques the dominant theories of immigration according to scholars of American political development and challenges conventional wisdom on the factors that structure opinion toward immigrants and immigration in the public opinion literature.

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rejection of commutation and substitution for conscripted citizens after the Civil War, the removal of sex/gender as a voting requirement in the early twentieth century, and the lifting of racial and ethnic prerequisites for immigration and citizenship following WWII—and characterized American political development as the gradual unfolding or application of liberal principles. Louis Hartz (1955) identified what became known as the *liberal consensus*.

First, the dominant theories of immigration in the United States are only complete if they include *jus meritum* as an avenue of political incorporation. For example, as discussed in Chapters Two and Three, Tichenor's (2002) analysis of the forces that sustain immigration policy regimes omits important work by Salyer (2004), Ngai (2004), and others. Specifically, Tichenor's neat typology does not account for the American Legion's public support for granting citizenship to Asian veterans of WWI while remaining opposed to the expansion of immigration and immigrants' rights generally. Lucy Salyer (2004) aptly describes the citizenship granted to Asian veterans of WWI as "nominal" (851). The temporary nature of these gains may be why the story of Asian veterans of WWI is not as widely known as that of their WWII counterparts.

It may also be that political scientists look for change across policy domains. For example, although Asian veterans were successful in obtaining citizenship through a separate act of Congress in 1935, it was not until 1952 that Congress lifted the racial and ethnic restrictions for nonmilitary petitioners (INA 1952; Nye-Lea Act of 1935). Klinkner and Smith (1999) explain that the public only recognized the contributions of marginalized groups during WWII in hindsight, during the civil rights era.[116] Looking across policy domains, we see that veterans are typically the first group to extract some political, social, economic, or civil right from the government of the United States. Similar developments are observed in the post-9/11 period. For example, as discussed in Chapter Three, service members that enlisted without being properly admitted to the US,

[116] Rogers Smith (1997) cites "three great eras of democratizing American civic reforms: the Revolution and Confederation years, the Civil War and Reconstruction epoch, and the civil rights era of the 1950s and 1960s" (16).

i.e. undocumented aliens, were nevertheless granted citizenship on the basis of their post-9/11 military service.

The statistical analysis of public support for the military versus college provisions of the DREAM Act support the idea that military service is exceptional. These data show that 59% support the military provision of the DREAM Act (37% oppose, 5% don't know) whereas only 36% support the college provision (58% oppose, 6% don't know). The analysis presented in Chapter Four challenges the economic and cultural explanations for public perceptions of immigration and the development of immigration policy in the United States. The DREAM Act data show exceptions to the economic-centered theories of attitude formation toward immigration policy when the immigrant volunteers for military service. At a minimum, these data support the use of separate questions on the DREAM Act provisions if pollsters want to accurately capture public opinion. Further study and polling data are needed to assess the importance of this hypothesis for immigration policy, especially with regard to the variation by the respondent's racial and ethnic identification.

IMPLICATIONS FOR THEORIES OF CIVIL-MILITARY RELATIONS

This dissertation makes two important contributions to the literature on civil-military relations in the United States. First, this study confirms the work of Cohen (1985), Krebs (2006), and Janowitz (1976), among others that identifies a link between military service and citizenship in the United States. The study of alien military service and naturalization contributes to the literature on the military as a political institution. Chapter One explored this connection. The Immigration and Naturalization Service's

appropriation of clauses from military enlistment oaths to compose a uniform oath of citizenship in the 1920s further substantiates this claim. Political theorists and civil-military relations scholars have shown the efficacy of political incorporation through military service (Janowitz 1976; Krebs 2006). Moreover, the work of comparative theorists and scholars of civil-military relations have established that this route is, historically speaking, nearly universal (Krebs 2006).

The second contribution of this dissertation to the literature on civil-military relations is more interesting. While confirming the analytical usefulness of the concept of a citizen-soldier tradition in the United States—of which alien military service is a critical feature—this study challenges conventional wisdom that the status or health of this tradition has suffered as the result of the introduction of the all-volunteer force in 1973. The need for mass armies is what led to the enlistment of aliens. The historical policy analysis in Chapter Two shows how a decentralized union of states reluctantly imposed a draft during the Civil War and encouraged the enlistment of the foreign born as military replacements for upper-class American citizens. However, in the 1910s, the public rejected the unegalitarian policies of substitution and commutation. Significantly the practices of substitution and commutation were not included in the WWI era draft law. In addition, the political consequences of the military demands of WWI led Congress to change the principle for determining draft liability from citizenship to residency. The transformation of the institution of citizenship as these veterans pressed for recognition for their service is an unintended consequence of the state mobilizing all available resources during a crisis period.

In short, the policy history of *jus meritum* challenges the conventional wisdom that the end of mass armies—usually marked by the introduction of the all-volunteer force in 1973—has severed the link between military service and citizenship. Incredibly, the end of the draft and the introduction of the all-volunteer force appears to have had no impact on aliens' draft liability and eligibility to enlist as volunteers. Given the magnitude of these changes and the importance of the citizen-soldier tradition for civil-military relations, it is reasonable to expect that the end of the draft in 1972 and the introduction of the all-volunteer force the following year would likewise be a critical juncture.

Yet, surprisingly, these events had no impact on aliens' draft liability or eligibility to serve as volunteers in the armed forces of the United States. No evidence indicates that Congress or the public wanted to limit volunteer enlistment to citizens (Jacobs and Hayes 1981). The shift from a conscript to all-volunteer force had no effect on alien military service obligations or opportunities. Given the substantial literature on the consequences of this change for civil-military relations in the United States, the nonimpact of the end of the draft on alien military service is most surprising.

DIRECTIONS FOR FUTURE RESEARCH

The foregoing analysis of alien military enlistment and naturalization statutes from the Civil War to the post-9/11 period suggests that the path to citizenship through military service remains open to resident aliens. The polling data examined in Chapter Four imply that *jus meritum* as a principle for inclusion remains strong despite the

public's split attitude toward immigration policy in general. As such, this section discusses a number of avenues for future research.

First, reflecting on the history of US citizenship policy, Rogers Smith (1997) argues that most modern liberal democratic theories "falter because they remain oblivious to the political imperatives that have structured U.S. civic identity and nation-building more broadly" (472). Better understanding of why the public supports alien incorporation through military service may lead policymakers to craft immigration and citizenship policies that strengthen and unify the community. Indeed, there may be other forms of national service that qualify as *jus meritum*, a possibility other scholars have discussed (see Wong and Cho 2006).

In fact, public perception of what qualifies as national service may have already shifted. A national study of youth perceptions conducted annually by the US government and published in 2003 identified several problems for military recruitment (Sackett and Mavor 2003). Until the mid-1990s high school seniors agreed that joining the military was doing "something important for the country" (Sackett and Mavor 2003, 214). Coincident with the end of the Cold War, however, "there has a been a gradual erosion of this belief to the point at which more people now feel that they will be doing something for their country in a civilian job than in the military" (Sackett and Mavor 2003, 214).[117]

[117] Sackett and Mavor (2003) write: More specifically, the net percentage attributing "doing something for the country" to the military rather than civilian jobs (i.e., the percentage attribution to the military minus the percentage attribution to civilian jobs) declined from 37 percent in 1992 to -5 percent in 1999 for men and from 39 percent in 1992 to -17 percent in 1999 for women…. Indeed, what is most startling about our analysis of the YATS data is that they clearly show a steady loss of a number of valued attributes to civilian occupations. That is, there has been a consistent erosion in the likelihood that many of these values are

While this development poses problems for military recruiters, it may also point to the feasibility to realizing *jus meritum* in the post-9/11 period through a variety of activities. In sum, the shift in youth attitudes from military to civilian occupations as "doing something important for the country" does not pose challenges for the idea of national service—broadly conceived. Currently there are proposals to forgive or commute student loan debt for young people willing to commit a number of years to national or community service. The US government already forgives the student loans of persons that enlist in the military. The loan forgiveness program operates like a reverse-GI Bill. Such a program could be expanded to include other forms of national service.

Second, since WWII the principle of *jus meritum* has been applied in novel ways to meet emerging national security needs. While these readings solve immediate practical problems, some of the applications raise theoretical and constitutional concerns; for example, honorary and posthumous citizens never exercise the rights of citizenship and cannot participate in the political process. These new applications of *jus meritum* are distinct from the historical experience of political incorporation through military service examined here.

Finally, given the historical and current importance of military service, the concern among civil-military relations scholars such as Morris Janowitz (1976), Elliot Cohen (2001), and others, about the consequences of exempting the majority of citizens from military service is germane for students of American politics. It behooves scholars

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more likely to be obtained from the military and a corresponding increase in the likelihood that they will be obtained from a civilian job or equally in both (214–215).

to watch how the Congress, president, and American public generally, acknowledge the sacrifice of alien service members in wars in Afghanistan and Iraq. Additionally, the place of undocumented soldiers and veterans raises important issues about balancing rights and obligations. The history of *jus meritum* suggests that the institution of citizenship can be reworked to meet these obligations when the public demands.

Appendix A: US Military Enlistment Oaths

The rules governing military forces, including the oaths of enlistment and commission, are written and passed by Congress. The oath of enlistment established by the First Congress has changed only once, in 1950, from 1789 to the present. The oath for commissioned officers has undergone multiple revisions in 1830, 1862, and 1884, until it appeared in its present form in 1959.

1775 Oath of Enlistment

For enlisted soldiers in 1775 the Second Continental Congress established the following oath as part of the act creating the Continental Army.

> I ___ have, this day, voluntarily enlisted myself, as a soldier, in the American continental army, for one year, unless sooner discharged: And I do bind myself to conform, in all instances, to such rules and regulations, as are, or shall be, established for the government of the said Army.

The 1775 oath reinforces the individual's voluntary, contractual enlistment into "the American continental army". It specifies the contract period of one year. The oath-taker "binds himself" to the rules that "are, or shall be, established for the government of the

said Army", a reference to the "69 Articles of War" enacted by the Continental Congress roughly two weeks after the creation of the Army.[118]

1776 Oath of Enlistment

The original wording was effectively replaced by Section 3, Article 1, of the Articles of War approved by the Continental Congress.[119]

> I ___ swear (or affirm as the case may be) to be trued to the United States of America, and to serve them honestly and faithfully against all their enemies opposers whatsoever; and to observe and obey the orders of the Continental Congress, and the orders of the Generals and officers set over me by them.

The 1776 oath swears or affirms allegiance to "the United States of America"- plural- to serve "them" faithfully, against all "their" enemies or opposers "whatsoever". The oath-taker swears to obey "the orders of the Continental Congress, and the orders of the Generals and officers set over me by them". It is unclear whether the "them" refers to the Generals or to the Congress. It is unclear why both "enemies" and "opposers" are included.

Also in 1776, the Continental Congress enacted the following for military officers and civilian national officers.[120]

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[118] The Second Continental Congress created the Army on June 14, 1775 and adopted the Articles of War on June 30, 1775.

[119] This Oath was enacted by the Continental Congress September 20, 1776.

[120] October 21, 1776.

> I ___, do acknowledge the Thirteen United States of America, namely, New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, independent, and sovereign states, and declare, that the people thereof owe no allegiance or obedience to George the third, king of Great Britain; and I renounce, refuse and abjure any allegiance or obedience to him; and I do swear that I will, to the utmost of my power, support, maintain, and defend the said United States against the said king, George the third, and his heirs and successors, and his and their abettors, assistants and adherents; and will serve the said United States in the office of ___, which I now hold, and in any other office which I may hereafter hold by their appointment, or under their authority, with fidelity and honour, and according to the best of my skill and understanding. So help me God.

The 1776 oath for officers, like the enlisted oath, refers to these (plural) United States, "their" authority and offices. The officer oath it is more specific politically. In the first part, the oath-taker "acknowledges" that the thirteen states, each of which it names, are "free, independent, and sovereign states" and that "the people thereof owe no allegiance or obedience to George the third". In the second part, the oath-taker personally renounces any allegiance to King George, his heirs, and successors. Finally, the oath-taker pledges to "serve said United States in the office of ___". Unlike the oath of enlistment that swears allegiance to "the United States of America" and pledges to obey the orders of the

officers appointed by the Continental Congress, the officer oath does not mention the Congress or any government other than the independent states, although it does refer to the office (of the United States) to which he is appointed. “So help me God” appears.

1778 Oath of Enlistment (Officers only)

The Continental Congress passed a revised version for officers, voted 3 February 1778 reads:

> I, ___ do acknowledge the United States of America to be free, independent and sovereign states, and declare that the people thereof owe no allegiance or obedience, to George the third, king of Great Britain; and I renounce, refuse and abjure any allegiance or obedience to him: and I do swear (or affirm) that I will, to the utmost of my power, support, maintain and defend the said United States, against the said king George the third and his heirs and successors, and his and their abettors, assistants and adherents, and will serve the said United States in the office of ___ which I now hold, with fidelity, according to the best of my skill and understanding. So help me God.

The 1778 oath for officers is shorter (because each of the states is not listed) but communicates the same substance as the 1776 oath. In the first part, the individual states are not listed. The second and third parts, renunciation and allegiance, respectively,

remain unchanged. Again, neither the Congress nor any other government of the United States of America is mentioned.

1789 Oath of Enlistment

The First Congress passed a new oath for all commissioned, non-commissioned officers and privates on September 29, 1789.[121]

> I, ___, do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States. I, ___, do solemnly swear or affirm (as the case may be) to bear true allegiance to the United States of America, and to serve them honestly and faithfully, against all their enemies or opposers whatsoever, and to observe and obey the orders of the President of the United States of America, and the orders of the officers appointed over me. [underline mine]

The oath-taker now swears or affirms to "support the constitution of the United States". There is no renunciation, reflecting the fact that the war for Independence has been won. Allegiance to "the United States of America"-plural- is pledged. The oath-taker swears or affirms to "serve them honestly…against all their enemies or opposers, whatsoever". Finally, the oath-taker promises to "observe and obey the order of the President of the United States of America, and the order of the officers appointed over me". Swearing to

[121] Section 3, Chapter 25, 1st Congress, approved September 29, 1789. This statute also specified that "the said troops shall be governed by the rules and articles of war, which have been established by the United States in Congress assembled, or by such rules and articles of war as may hereafter by law be established."

obey the "officers appointed over me" is standard for enlisted oaths (is found in both the 1775 and 1776 enlistment oaths) but is now extended to officers. All oath-takers swear to "observe and obey the orders of the President", reflecting the Second Article of the Constitution.

1830 Oath of Enlistment

The oath of enlistment remained unchanged until 1950. For officers however, there were several changes in the interim. A change in about 1830 reads:

> I, ___, appointed a ___ in the Army of the United States, do solemnly swear, or affirm, that I will bear true allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies or opposers whatsoever, and observe and obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles for the government of the Armies of the United States.

This 1830 oath returns to the tradition of specifying the office (rank) to which the oath-taker is appointed. Like the 1789 version, there is no renunciation. The individual swears or affirms allegiance to the United States of America (plural) and to obey the orders of the President, the officers appointed over him, and the "rules and articles for the government of the Armies of the United States". The last line refers to Congress' constitutional power to "make rules for the government and regulation of the land and

naval forces". Its appearance here may reflect the importance of the "101 Articles of War" enacted by Congress on April 10, 1806.

1862 Oath of Enlistment (Officers only)

On July 2, 1862 Congress changed the officer oath to read:

> I, ___, do solemnly swear (or affirm) that I have never borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatsoever under any authority or pretended authority in hostility to the United States; that I have not yielded voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God. [underline mine]

This 1862 oath contains a new renunciation: the oath-taker swears or affirms his continued allegiance to the United States since he has been a citizen, renouncing any "pretended government, authority, power, or constitution within the United States, hostile or inimical thereto". The second part pledges to "support and defend the Constitution of the United States against all enemies, foreign and domestic". The specification of enemies, "foreign and domestic" is an obvious reference to Southern succession. Finally, the individual declares that he "take[s] this obligation freely, without any mental reservation or purpose of evasion". This oath emphasizes the singular nature of political allegiance and the individual's voluntary entrance into the Army of the United States.

1884 Oath of Enlistment

On May 13, 1884 Congress reverted to a simpler formulation:

> I, ___, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God. [underline mine]

The 1884 officer oath contains much of the text that appears in the contemporary oath. It pledges to "support and defend the Constitution of the United States"; the distinction

between “foreign and domestic” enemies remains. The individual pledges allegiance to the United States and acknowledges the voluntary nature of his commission. This version remained in effect until slightly modified in 1959, when Congress adopted of the present wording.[122]

> I, ___, having been appointed an officer in the Army of the United States, as indicated above in the grade of ___ do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservations or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; So help me God.

1959 Oath of Enlistment

The 1959 version is nearly identical to the 1884 oath. There is no renunciation. The 1959 version specifies the individual’s appointment to grade (rank), observed in the 1830 version. It should also be noted that the provision to obey the orders of the President of the United States and officers appointed above them last appeared in the 1830 version; it did not appear in the 1862 or 1884 officer oaths.

[122] DA Form 71, 1 August 1959 (officers only).

1960 Oath of Enlistment

For enlisted soldiers, the 1789 oath remained in effect until 1960 when Congress adopted the oath administered today.[123]

> I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God. [underline mine]

The 1960 oath of enlistment identifies the Constitution of the United States as the object of allegiance, vowing to support and defend it "against all enemies foreign and domestic". The enlistee pledges to obey the orders of the President of the United States and senior officers according to "regulations and the Uniform Code of Military Justice", effective May 31, 1951.

[123] On May 5, 1960 Congress amended 10 USC to replace the wording first adopted in 1789; effective date October 5, 1962.

Appendix B: US Citizenship Oath

The United States did not have a standardized oath of citizenship for the naturalization of aliens until 1929. The United States Oath of Citizenship (or, of Renunciation and Allegiance) remains in use today:

> I hereby declare, on oath / or solemnly affirm,
>
> that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen;[124]
>
> that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic;[125]
>
> that I will bear true faith and allegiance to the same;[126]
>
> that I will bear arms on behalf of the United States when required by the law;
>
> that I will perform noncombatant service in the armed forces of the United States when required by the law;
>
> that I will perform work of national importance under civilian direction when required by the law;[127]

[124] Parts of this clause appear as early as the 1776 Oath of Enlistment and the 1778 Oath for Officers.

[125] From the military oath of enlistment (renunciation of foreign allegiance and pledge of allegiance to the United States) that was dropped by the First Congress.

[126] This language first appeared in the 1830 Oath of Enlistment.

[127] This clause and the previous only appears in the Citizenship Oath.

and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.[128]

[128] This clause first appeared in the 1862 Oath of Enlistment.

Appendix C: DREAM Act Polling Data

The Texas Politics Survey from May 2011 is available on the Texas Politics Project website (http://texaspolitics.laits.utexas.edu). It is the only nonpartisan survey of Texas public opinion conducted by YouGov/Polimetrix using web-based survey technology (matched on gender, age, race, education, PID, ideology, political interest); poststratification weights are based on the 2008 Current Population Survey (N = 800, registered voters). Below are the descriptive statistics for the variables analyzed in chapter 4.

Dependent Variable

The dependent variable is support for the DREAM Act provisions. These questions were added to the survey at the author's request. The DV is measured on a five point scales so that 1=strongly oppose and 5=strongly support; "don't know" were recoded as 3 or the middle of the scale). The DV is based on responses to the following.

Q31. Please indicate your opinion on the following immigration proposals. [Randomize a-b]

1 = Strongly Oppose

2 = Somewhat Oppose

3= Somewhat Support

4 = Somewhat Support

5 = Don't Know

Q31a. Passing a law that would allow illegal immigrants brought to the U.S. as children to gain legal resident status if they join the military.

Q31b. Passing a law that would allow illegal immigrants brought to the U.S. as children to gain legal resident status if they go to college.

Support for the Military and College Provisions of the DREAM Act

	Military (n=797)	College (n=798)
Strongly support	25%	16%
Somewhat support	34%	20%
Somewhat oppose	12%	13%
Strongly oppose	25%	45%
Don't know	5%	6%

Source: May 2011 Texas Politics Survey

Descriptive Statistics for the Independent Variables included in the OLS regression

Age

18-29	16%
30-44	27%
45-64	41%
65+	16%

Gender

Male	47%
Female	53%

Race/Ethnicity

White	63%
African-American	12%
Hispanic or Latino	18%
Other *	7%

* includes Asian/Pacific Islander, Native American, and Mixed

Education

Some high school	2.5%
High school degree	22.8%
Some college	34.4%
2 year college degree	10.1%
4 year college degree	22.5%
Post-grad degree	7.6%

Religion [no open response on “other”]

Agnostic	5%	Methodist*	5%
Assembly of God*	2%	Mormon*	1%
Atheist	4%	Muslim/Islam	0%
Baptist*	20%	Nondenom. Christian*	9%
Buddhist	1%	Orthodox/Eastern Orth.*	0%
Catholic*	16%	Pentecostal*	2%
Christian Scientist*	4%	Presbyterian*	2%
Church of Christ*	4%	Protestant (non-specific)*	4%
Church of God*	1%	Reformed*	0%
Disciples of Christ*	1%	Unitarian/Universalist*	0%
Episcopal/Anglican*	2%	United Church of Christ*	0%
Hindu	0%	Spiritual but not religious	9%
Jehovah’s Witnesses	0%	Other*	7%
Jewish	1%	Don’t know	2%
Lutheran*	2%		

Party Identification

"Generally speaking, would you say that you usually think of yourself as a…"

(Including four PID follow-up questions)

Strong Democrat	21.2%
Not very strong Democrat	10.9%
Lean Democrat	6.5%
Independent	10.8%
Lean Republican	15.6%
Not very strong Republican	8.3%
Strong Republican	26.7%
Other	2%

Cross tabulation of Black by Support for the Military Provision

Support for Military Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Not Black	24.39% n=171	10.84% n=76	3.42% n=24	35.09% n=246	26.25% n=184	100.00% n=701
Black	23.96% n=23	9.38% n=9	8.33% n=8	29.17% n=28	29.17% n=28	100.00% n=96
Total	24.34% n=194	10.66% n=85	4.02% n=32	34.38% n=274	26.60% n=212	100.00% n=797

Pearson $Chi^2(4) = 6.3790$ Pr = 0.173

Cross tabulation of Black by Support for the College Provision

Support for College Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Not Black	46.87% n=329	12.68% n=89	4.99% n=35	18.09% n=127	17.38% n=122	100.00% n=702
Black	35.42% n=34	10.42% n=10	5.21% n=5	28.13% n=27	20.83% n=20	100.00% n=96
Total	45.49% n=363	12.41% n=99	5.01% n=40	19.30% n=154	17.79% n=142	100.00% n=798

Pearson $Chi^2(4) = 7.7623$ Pr = 0.101

Cross tabulation of Hispanic by Support for the Military Provision

Support for Military Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Not Hispanic	25.72% n=169	10.5% n=69	4.11% n=27	34.70% n=228	24.96% n=164	100.00% n=657
Hispanic	17.86% n=25	11.43% n=16	3.57% n=5	32.86% n=46	34.29% n=48	100.00% n=140
Total	24.34% n=194	10.66% n=85	4.02% n=32	34.38% n=274	26.60% n=212	100.00% n=797

Pearson $Chi^2(4) = 6.9957$ Pr = 0.136

Cross tabulation of Hispanic by Support for the College Provision

Support for College Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Not Hispanic	50.23% n=330	11.72% n=77	4.87% n=32	17.96% n=118	15.22% n=100	100.00% n=657
Hispanic	23.40% n=33	15.60% n=22	5.67% n=8	25.53% n=36	29.79% n=42	100.00% n=141
Total	45.49% n=363	12.41% n=99	5.01% n=40	19.30% n=154	17.79% n=142	100.00% n=798

Pearson $Chi^2(4) = 37.2132$ Pr = 0.000

There were too few respondents who identified as “Other” Race to evaluate the relationship between it and support for the military and college provisions (measured on a 5 point scale).

Immigration Approval

"On the whole, do you think immigration is a good thing or a bad thing for this country today?"

Good thing	43.6%
Bad thing	44.4%
Don't know	12.0%

Cross tabulation of *Recoded* Immigration Approval by DREAM Act Provisions

The cross tabulations of Immigration Approval by Support for the Military and College provisions presented in chapter 4 include the "don't know" responses. Below are the cross tabulations for Immigration Approval by Support for the Military and College provisions with the "don't know" responses recoded as missing. The Recoded Immigration Approval variable is related to Support for the Military and College provisions but the value of Chi^2 for each is lower.

Cross tabulation of Immigration Approval by Support for the Military Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	Total
Good Thing	13.26% n=46	10.09% n=35	2.31% n=8	35.16% n=122	39.19% n=136	100.00% n=3347
Bad Thing	32.89% n=148	11.11% n=50	5.33% n=24	33.78% n=152	16.89% n=76	100.00% n=450
Total	24.34% n=194	10.66% n=85	4.02% n=32	34.38% n=274	26.60% n=212	100.00% n=797

Pearson $chi^2(4) = 72.4404$ Pr = 0.000

Cross tabulation of Immigration Approval by Support for the College Provision

	Strongly Oppose 1	2	3	4	Strongly Support 5	
Good Thing	26.15% n=91	14.08% n=49	3.74% n=13	21.84% n=76	34.20% n=119	100.00% n=348
Bad Thing	60.44% n=272	11.11% n=50	6.00% n=27	17.33% n=78	5.11% n=23	100.00% n=450
Total	45.49% n=363	12.41% n=99	5.01% n=40	19.30% n=154	17.79% n=142	100.00% n=798

Pearson $chi^2(4) = 149.4930$ Pr = 0.000

Other cross tabulations discussed in Chapter Four

Cross tabulation of 7 point Party Identification by Immigration Approval

7 point Party ID	Bad Thing	Good Thing	Total
Strong Republican	74.04% n=154	25.96% n=54	100% n=208
Not very strong Republican	61.54% n=40	38.46% n=25	100% n=65
Lean Republican	59.84% n=73	40.16% n=49	100% n=122
Independent	57.14% n=48	42.83% n=36	100% n=84
Lean Democrat	25.49% n=13	74.51% n=38	100% n=51
Not very strong Democrat	54.12% n=46	45.88% n=39	100% n=85
Strong Democrat	36.97% n=61	63.03% n=104	100% n=165
Total	55.77% n=435	44.23% n=345	100% n=780

Pearson $chi^2(6) = 72.5934$ Pr = 0.000

References

Ackerman, Bruce. 1998. *We the People: Transformations.* Cambridge: Harvard University Press.

American Bar Association. 1986. ABA Standards for Criminal Justice, *Pleas of Guilty*, (2d ed. 1980 & Supp. 1986).

American Bar Association Pro Bono. 2008. ABA Launches Project Linking Volunteer Lawyers with Military Personnel Needing Civil Representation, August 13, 2008, American Bar Association, www.militaryprobono.org.

Adams, Willi Paul. 1980. *The First American Constitutions: Republican Ideology and the Making of State Constitutions in the Revolutionary Era.* Chapel Hill: University of North Carolina Press.

Albano, Sondra. 1994. "Military Recognition of Family Concerns: Revolutionary War to 1993," *Armed Forces and Society* 20: 283-302.

AILA Military Assistance Project (MAP). 2007. Program of the American Immigration Lawyers Association, December 19, 2007.

Amaya, Hector. 2007. "Dying American or the Violence of Citizenship: Latinos in Iraq," *Latino Studies* 5(1): 3-24.

Amaya, Hector. 2013. *Citizenship Excess: Latino/as, Media, and the Nation*, New York: New York University Press.

Amici Curiae in *Chaidez v US*, 2012, Brief for American Immigration Lawyers Association in *Chaidez v US.* No. 11-820. July 23, 2012.

Amici Curiae in Hernandez v FL, 2012, Brief for American Immigration Lawyers Association in *Hernandez v FL,* No. 3D10-2462, February 20, 2012.

Amici Curiae in *Padilla v. Kentucky,* 2010, Brief for *Amici Curiae* Asian American Justice Center, Mexican American Legal Defense and Educational Fund et al., No. 08-651.

Asch, Beth J., Christopher Buck, Jacob Klerman, Meredity Kleykamp, and David Loughran. 2009. *Military Enlistment of Hispanic Youth: Obstacles and Opportunities,* Santa Monica, CA: RAND.

Asch, Beth J., Paul Heaton, and Bogdan Savych. 2009. *Recruiting Minorities: What Explains Recent Trends in the Army and Navy,* Santa Monica, CA: RAND.

Bacevich, Andrew. 1998. "Who Will Serve?" *Wilson Quarterly* 22(3): 80-91.

Banished Veterans. 2012. Banished Veterans website, www.banishedveterans.info/index.html (Accessed November 12, 2012).

Barbasa, Juliana. 2007. "Soldiers Fight for U.S., Worry as Family Members Face Deportation," *Boston Globe*, August 13.

Basel, Roy P., Ed. 1953. *The Collected Works of Abraham Lincoln*, vol. 4. New Brunswick: Rutgers University Press.

Bixler, Mark. 2003. "Immigrants Join U.S. Military for Security, to Prove Loyalty," *The Atlanta Journal-Constitution*, March 19.

Bixler, Mark. 2003. "Valuable Soldier an Illegal Immigrant," *The Atlanta Journal-Constitution*, November 7.

Black, Forrest R. 1926. "Conscription for Foreign Service," *American Law Review* 60 (1926): 206-231.

Blanck, Peter, and Chen Song. 2001. "With Malice Toward None; With Charity Toward All:" Civil War Pensions for Native and Foreign-Born Union Army Veterans, *Transnational Law and Contemporary Problems* 11(1).

Bruno, Andorra. 2010. Unauthorized Alien Students: Issues and "DREAM Act" Legislation. Congressional Research Service Report to Congress, RL33863, December 2010.

Bruno, Andorra, et al. 2009. Immigration Legislation and Issues in the 111th Congress, Congressional Research Service Report to Congress, RL40848, October 2009.

Burk, James. 2001. "The Military Obligation of Citizens since Vietnam," *Parameters* 31(2): 48-60.

Burns, P. and J. Gimpel. 2000. "Economic Insecurity, Prejudicial Stereotypes, and Public Opinion on Immigration Policy," *Political Science Quarterly* 115 (3): 201–25.

Bush, George W. 2001. "Remarks to National Guard Personnel and Reservists in

Charleston," February 14, 2001. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project.* http://www.presidency.ucsb.edu/ws/?pid=45863 (Accessed May 31, 2015).

Bush, George W. 2002. Executive Order 13269 signed July 3, 2002, Expedited Naturalization of Aliens and Noncitizen Nationals Serving in An Active-Duty Status during the War on Terrorism. 67 Fed. Reg. 45287, 2002.

Bush, George W. 2006. Remarks at Naturalization Ceremony, Walter Reed Army Medical Center, July 24. Available http://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060724-3.html (Accessed December 1, 2014)

Bustamante, Jorge, Jasso Guillermina, Edward Taylor, and Paz Trigueros Legarreta. 1998. "Characteristics of Migrants: Mexicans in the United States." In *Migration between Mexico and the United States: Binational Study*, 91-162, Mexico City/Washington, DC: Mexican Ministry of Foreign Affairs and U.S. Commission on Immigration Reform.

Campbell, Monica. 2005. "Dead recruit's father wages campaign against green-card Marines: Prospects of careers, citizenship not worth the danger, he warns," *San Francisco Chronicle*, May 22. Available http://articles.sfgate.com/2005-05-22/news/17374230_1_green-card-latinos-fernando-suarez-del-solar (Accessed September 22, 2010).

Carens, Joseph H. 1987. "Aliens and Citizens: The Case for Open Borders," *Review of Politics* 49 (2): 251-273.

Carson, Giselle. 2006. "Naturalization on the Rise; Practical Answers to Newer Practioners' Naturalization Questions: Part II," *AILA Dispatch* 12 (November/December 2006).

Carter, April. 1998. "Liberalism and the Obligation to Military Service," *Political Studies* 46: 69.

Catholic Legal Immigration Network, Inc. 2000. *The Impact of Our Immigration Laws and Policies on U.S. Families.*

Cavallaro, Gina. 2010. "Afghan-born Marine Threatened with Deportation," *The Military Times*, August 2. Available www.militarytimes.com/news/2010/08/marine_siddiqi_080210/ (Accessed November 28, 2010).

Chambers, John. 1987. *To Raise an Army: The Draft Comes to Modern America.* New York: The Free Press.

Chandler, Charles R. and Yung-Mei Tsai. 2001. "Social Factors Influencing Immigration Attitudes: An Analysis of Data from the General Social Survey," *Social Science Journal* 38 (2): 177–88.

Citrin, Jack and Donald P. Green. 1990. The Self-Interest Motive in American Public Opinion In *Research in Micropolitics,* ed. Samuel Long, Vol. 3. Greenwich, CT: JAI Press.

Citrin, Jack, Donald P. Green, Beth Reingold, and Evelyn P. Walters. 1990. "The Official English Movement and the Symbolic Politics of Language in the United States," *Western Political Quarterly* 43:85-108.

Citrin, Jack, Beth Reingold, and Donald P. Green. 1990. "Identity and the Politics of Ethnic Change," *Journal of Politics* 52 (2): 1124-54.

Clark, Ramsey. 1968. U.S. Attorney General's Opinion on Exemption of Resident Aliens from Military Service Pursuant to International Treaties.

Cohen, Elizabeth F. 2009. *Semi-Citizenship in Democratic Politics*, Cambridge: Cambridge University Press.

Cohen, Elizabeth F. 2010. "Jus Tempus in the Magna Carta: The Sovereignty of Time in Modern Politics and Citizenship," *PS* (July 2010): 463-466.

Cohen, Elizabeth F. 2011."Reconsidering US Immigration Reform: The Temporal Principle of Citizenship," *Perspectives on Politics* 9 (3): 575-583.

Cohen, Elliot. 2001. "Twilight of the Citizen-Soldier," *Parameters,* US Army War College Quarterly, Summer 2001.

Cohen, Elliot. 1985. *Citizens and Soldiers: The Dilemmas of Military Service.* Ithaca: Cornell University Press.

Craig, Stephen C., Richard G. Niemi, and Glenn E. Silver. 1990. "Political Efficacy and Trust: A Report on the NES Pilot Study Items," *Political Behavior* 12: 289-314.

Cress, Lawrence. 1982. *Citizens in Arms: The Army and the Militia in American Society to the War of 1812.* Chapel Hill: The University of North Carolina Press.

Dahl, Ronald A. 1989. *Democracy and its Critics,* New Haven: Yale University Press.

Davila, Florangela. 2003. “Army Says Illegal-Immigrant Soldier Can Stay,” *Seattle Times*, September 12.

Davila, Florangela. 2004. “Army Private Receives New Rank: U.S. Citizen,” *Seattle Times*, February 12.

DeGenova, Nicholas. 2002. “Migrant “Illegality” and Deportability in Everyday Life,” *Annual Review of Anthropology* 31: 419.

Dempsey, Jason K. 2010. *Our Army: Soldiers, Politics, and American Civil-Military Relations.* Princeton: Princeton University Press.

Dempsey, Jason K. and Robert Y. Shapiro. 2009. “The Army’s Hispanic Future,” *Armed Forces and Society* 35(1): 526-61.

DeSipio, Louis. 1996. “Counting on the Latino Vote: Latinos as a New Electorate,” Charlottesville, VA: University Press of Virginia.

Dragomir, Cristina. 2011. “Being a Foreigner, a Soldier, and an American: The Life Story of an Immigrant,” Paper presented at the 2011 meeting of the Western Political Science Association, April 21 – 23, 2011, San Antonio, Texas.

Erikson, Robert S. and Kent L. Tedin. 2005. *American Public Opinion: Its Origin, Content and Impact*. 7th ed. New York: Pearson-Longman.

E-Security. 2010. US Army’s New E-Security Processing Policy of June 10, 2010. Available www.mepcom.army.mil/publications/Documents/Policies/INFO-10-06JUN-126.pdf (Accessed November 12, 2012).

Engle, Stephen D. 2010. Yankee Dutchmen: Germans, the Union, and the Construction of Wartime Identity, In *Civil War Citizens: Race, Ethnicity, and Identity in America’s Bloodiest Conflict*. Ed. Suzanne J. Ural, 11-56. New York: New York University Press.

Facchini, Giovammi and Anna M. Mayda. 2009. “Does the Welfare State Affect Individual Attitudes toward Immigrants? Evidence across Countries,” *Review of Economics and Statistics* 91 (2): 295–314.

Feldman, Stanley. 1985. “Economic Self-interest and Political Behavior,” *American Journal of Political Science* 26: 446-66.

Feldman, Stanley. 1988. “Structure and Consistency in Public Opinion: The Role of Core

Beliefs and Values," *American Journal of Political Science* 32: 416-40.

Field, Maury. 1977. *The Structure of Violence: Armed Forces as Social Systems.* Beverly Hills: Sage.

Fitzhugh, William, and Charles Hyde. 1942. "The Drafting of Neutral Aliens by the United States," *The American Journal of International Law* 36: 369-82.

Fligstein, Neil. 1980. "Who Served in the Military, 1940–73," *Armed Forces and Society* 6: 297-312.

Ford, Nancy. 1997. ""Mindful of the Tradition of his Race" Dual Identity and Foreign-Born Soldiers in the First World War American Army," *Journal of American Ethnic History* 16(2): 35-59.

Franklin, Frank G. 1969 (originally 1906). *The Legislative History of Naturalization in the United States, from the Revolutionary War to 1861*. Chicago: University of Chicago Press.

Freeman, Gary. 1995. "Modes of Immigration Politics in Liberal Democratic States," *International Migration Review* 29(4): 881-902.

Freeman, Gary, and Bob Birrell. 2001. "Divergent Paths of Immigration Politics in the United States and Australia," *Population and Development Review* 27(2): 525-551.

Freeman, Gary, Luis Plascencia, Susan Gonzalez Baker, and Manuel Orozco. 2002. "Explaining the Surge in Citizenship Applications in the 1990s: Lawful Permanent Residents in Texas," *Social Science Quarterly* 83(4): 1013-1025.

Freeman, Harrop A. 1944. "The Constitutionality of Peacetime Conscription," *Virginia Law Review* 31: 40-82.

Freeman, Harrop A. 1946. "Compulsory Universal Military Training in Peacetime: Against its Constitutionality," *American Bar Association Journal* 32 (1946): 259-262.

Freeman, Harrop A. 1971. "The Constitutionality of Direct Federal Military Conscription," *Indiana Law Journal* 46 (1971): 333-346.

Friedman. 1968. "Conscription and the Constitution: The Original Understanding," *Michigan Law Review* 67: 1493-1552.

Forman, Marcy M. 2004. Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service, June 21, 2004. Available www.ice.gov/doclib/foia/prosecutorial-discretion/aliens-us-military-service.pdf (Accessed November 17, 2012).

Fullerton, Maryellen and Noah Kingstein. 1986. "Strategies for Ameliorating the Immigration Consequences of Criminal Convictions: A Guide for Defense Attorneys," *American Criminal Law Review* 23: 425 (1986).

Gallup Daily Tracking Survey. 2010. Phone survey conducted December 3-6, 2010 (www.gallup.com).

Gillison, Douglas. 2005. "Marines: looking for a few good aliens; Recruiter on trial for selling IDs to enlist illegals," *Village Voice*, September 2. Available www.villagevoice.com/2005-09-27/news/marines-looking-for-a-few-good-aliens/ (Accessed November 12, 2012).

Goring, Darlene C. 2001. "In Service to America: Naturalization of Undocumented Alien Veterans," *Seton Hall Law Review* 31: 400-478.

Gorman, Anna. 2010. "Iraq War Veteran may be denied citizenship," *Los Angeles Times*, April 26. Available http://articles.latimes.com/2010/apr/26/local/la-me-immig-army-20100426 (Accessed September 22, 2010).

Haas, Theodore. 1957. "The Legal Aspects of Indian Affairs from 1887 to 1957," *The Annals of the American Academy of Political and Social Science* 311 (1):12-22.

Hainmueller, Jens, and Michael J. Hiscox. 2010. "Attitudes toward Highly-skilled and Low-skilled Immigration: Evidence from a Survey Experiment," *American Political Science Review* 104 (1): 61-84.

Hartz, Louis. 1955. *The Liberal Tradition in America*. New York: Harcourt, Brace and World.

Hasday, Jill. 2008. "Fighting Women: The Military, Sex, and Extrajudicial Change," *Minnesota Law Review* 93: 96.

Hattiangadi, Anita U., et al. 2005. *Non-citizens in Today's Military: Final Report*. Washington, D.C.: Center for Naval Analysis.

Heater, Derek. 1999. *What is Citizenship?* Maldon, MA: Polity Press.

Hill, R. 1949. *Families under Stress*. New York: Harper.

Holton, Woody. 1999. *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia*. Chapel Hill: University of North Carolina Press.

Human Rights Watch. 2007. *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*.

Huntington, Samuel P. 1957. *The Soldier and the State: The Theory and Politics of Civil-Military Relations.* Cambridge: Belknap/ Harvard University Press.

Huntington, Samuel P. 1981. *American Politics: The Promise of Disharmony*, Cambridge: Harvard University Press.

Huntington, Samuel P. 2004. *Who Are We? The Challenges to America's National Identity.* New York: Simon and Schuster.

Immigration Policy Center (IPC). 2007. "The DREAM Act of 2007: Frequently Asked Questions," October. Available www.immigrationpolicy.org.

Jackson, Lynne M., and Victoria M. Esses. 2000. "Effects of Perceived Economic Competition on People's Willingness to Help Empower Immigrants," *Group Processes Intergroup Relations* 3(4): 419-435.

Janowitz, Morris. 1976. "Military Institutions and Citizenship in Western Societies," *Armed Forces and Society* 2(2): 185-204.

Jontz, Sandra. 2007. "Immigration Workshop Welcomed in Naples," *Stars and Stripes*, October. Available www.stripes.com/news/immigration-workshop-welcomed-in-naples-1.69571 (Accessed June 20, 2012).

Kessler, Alan. 2001. Immigration, Economic Insecurity, and the "Ambivalent" American Public Working Paper, Center for Comparative Immigration Studies, UC San Diego, September 1. Available: http://escholarship.org/uc/item/6k5531rt.

Kestnbaum, Meyer. 2000. "Citizenship and Compulsory Military Service: The Revolutionary Origins of Conscription in the United States," *Armed Forces and Society* 27(1): 7-36.

Kettner, James H. 1976. "Subjects or Citizens? A Note on British Views Respecting the Legal Effects of American Independence," *Virginia Law Review* 62 (5): 945.

Kettner, James H. 1978. *The Development of American Citizenship, 1608-1870*, Chapel

Hill: University of North Carolina Press.

Kiewiet, D. Roderick. 1983. *Macroeconomics and Micropolitics: The Electoral Effects of Economic Issues*. Chicago: University of Chicago Press.

Kim, Seung Min, and Jeremy Herb. 2014. "Military Immigrant Program Halted," *Politico*, October 24, 2014.

Kinder, Donald R., and D. Roderick Kiewiet. 1981. "Sociotropic Politics: The American Case," *British Journal of Political Science* 11: 129-61.

King, Gary, Michael Tomz, and Jason Wittenberg. 2000. "Making the Most of Statistical Analyses: Improving Interpretation and Presentation," *American Journal of Political Science* 44 (2): 347-61.

Kirkorian, Mark. 2003. "Green-Card Soldiers: Should the U.S. Military be Reserved for Americans?" *National Review Online*, April 22.

Klinkner, Philip A., and Rogers M. Smith. 1999. *The Unsteady March: The Rise and Decline of Racial Equality in America.* Chicago: Chicago University Press.

Kolinski, Charles J. 1965. *Independence or Death! The Story of the Paraguayan War,* Gainesville: University of Florida Press.

Korb, Lawrence J., and Sean E. Duggan. 2007. "An All-Volunteer Army: Recruitment and its Problems," *PS: Political Science and Politics* 40: 467-71.

Krebs, Ronald R. 2004. "A School for the Nation? How military service does not build nations and how it might," *International Security* 29(4): 85-124.

Krebs, Ronald R. 2006. *Fighting for Rights: Military Service and the Politics of Citizenship.* Ithaca: Cornell University Press.

Krebs, Ronald R. 2009. "The Citizen-Soldier Tradition in the United States: Has Its Demise Been Greatly Exaggerated?" *Armed Forces and Society* 36(1): 153-174.

KTVU. 2009. "ICE Officials Move to Deport Scottish Vietnam Vet", October 8. Available www.ktvu.com/news/news/ice-officials-move-to-deport-scottish-vietnam-vet/nK3cg/ (Accessed October 30, 2012).

Lamm, Jennifer E. 2010. *Non-Citizen Soldiers, Veterans, and Their Families: Defense Personnel Policy and the Principles of American Politics,* MA Thesis: The University of Texas at Austin.

Lamm, Jennifer E. 2012. Public Opinion on the "Military" and "College" Provisions of the DREAM Act: Attitudes toward Immigrants and Immigration Policy, and Reform Paper prepared for the Annual Meeting of the Midwest Political Science Association, Chicago, Illinois, April 11-15, 2012.

Lamm, Jennifer E. 2013. The Department of Defense's Stakes in Immigration Reform, Paper prepared for the Biannual Meeting of the Inter-University Seminar on the Armed Forces and Society, Chicago, Illinois, October 24-27, 2013.

Lamm, Jennifer E. 2013. Military Exceptionalism? What the Disparity in Public Support for the Military and College Provisions of the DREAM Act Tells Us About the Forms of National Service Viewed as Citizenship Worthy, Paper prepared for the Annual Meeting of the Midwest Political Science Association, Chicago, Illinois, April 11-14, 2013.

Lamm, Jennifer E. 2013. Varieties of American Citizenship and Belonging, Paper prepared for the Annual Meeting of the Western Political Science Association, Hollywood, California, March 28-30, 2013.

Lilley, Kevin. 2014. "Noncitizen recruiting program expanded, then stopped," *Military Times*, December 17.

Latina Lista. 2009. "Over three thousand undocumented military veterans battling deportation orders," October 7. http://latinalista.com/2009/10/over_three_thousand_undocumented_militar/ (Accessed October 30, 2012).

Latina Lista. 2010. "Two Latino brothers, and Vietnam vets, are latest victims of broken immigration system," September 13. Available http://latinalista.com/2010/09/two_latino_brothers_and_vietnam_vets_are/ (Accessed October 30, 2012).

Latina Lista. 2010. "Deported military veterans plead to be classified as "non-citizen Nationals," January 8, 2010. Available http://latinalista.com/2010/01/group_of_deported_military_veterans_plea/ (Accessed October 30, 2012).

Lee, Margaret M., and Ruth E. Wasem. 2009. *Expedited Citizenship through Military Service: Current Law, Policy, and Issues*, Congressional Research Service, 7-5700.

Lescault. 1998. "The INS continues to make fingerprinting more difficult," *Army*

Lawyer 7 (July 1998): 60-61.

Lester, Martin. 2011. "The "New" Obama Enforcement Policy: Rumor and Reality," La Costa Latina, September 8, 2011. Available http://latinalista.com/2011/09/the-new-obama-enforcement-policy-rumor-and-reality/ (Accessed October 30, 2012).

Levs, Josh. 2009. "U.S. to Pay "Forgotten" WWII Filipino Veterans," *CNN*, February 23, 2009. Available http://www.cnn.com/2009/US/02/23/forgotten.veterans/ (Accessed August 11, 2015).

Linderman, Gerald F. 1999. *The World within War: America's Combat Experience in WWII,* Cambridge: Harvard University Press.

Loescher, Gil, and John A. Scanlon. 1986. *Calculated Kindness: Refugees and America's Half-Open Door, 1945-Present.* New York: Free Press.

Lonn, Ella. 1951. *Foreigners in the Union Army and Navy*. Baton Rouge: Louisiana State University Press

Lorch, Donatello. 2003. "A Matter of Loyalty: He joined the Army with a fake green card. Now what? (Pvt. Juan Escalante)," *Newsweek*, November 3, 2003.

Malbin, Michael J. 1972. "Conscription, the Constitution, and the Framers: An Historical Analysis," *Fordham Law Review* 40: 805-826.

Mansfield, Edward D., and Diana C. Mutz. 2009. "Support for Free Trade: Self-Interest, Sociotropic Politics, and Out-group Anxiety," *International Organization* 63 (2): 425–57.

Marrero, Pilar. 2010. "U.S. War Veterans Fight Deportation," *La Opinion*, Trans. Elena Shore and Suzanne Mennah, January 24. http://news.newamericamedia.org/news/ (Accessed November 28, 2010).

Maulkin, Michelle. 2003. "P.C. Insanity at the Pentagon," *CapitalismMagazine.com*, October 8. (Accessed September 22, 2010).

Mayda, Anna M. 2004. Who Is Against Immigration? A Cross-Country Investigation of Individual Attitudes toward Immigrants, IZA Discussion Paper No. 1115, April 2004, www.iza.org.

McIntosh, Molly F., Seema Sayala, and David Gregory. 2011. *Non-Citizens in the Enlisted U.S. Military,* Center for Naval Analyses, November 2011.

McNaughton, James C. 2006. *Nisei Linguists: Japanese Americans in the Military Intelligence Service during World War II.* Department of the Army: Washington, DC. Available http://www.history.army.mil/html/books/nisei_linguists/CMH_70-99-1.pdf (Accessed August 11, 2015).

Mershon, Sherie, and Steven Schlossman. 1998. *Foxholes and Color Lines: Desegregating the U.S. Armed Forces*. Santa Monica, Calif.: RAND.

Mettler, Suzanne. 2002. "Bringing the State Back in to Civic Engagement: Policy Feedback Effects of the G.I. Bill for World War II Veterans," *American Political Science Review* 96:351.

Mettler, Suzanne. 2005. "'The Only Good Thing Was the G.I. Bill': Effects of the Education and Training Provisions on African-American Veterans' Political Participation," *Studies in American Political Development* 19:31.

Mickelwait, Claude B. 1940. "Legal Basis for Conscription," *American Bar Association* 26: 692-705.

Military Accessions Vital to the National Interest (MAVNI) Recruitment Pilot, May 2012. Available www.defense.gov/news/mavni-fact-sheet.pdf (Accessed November 18, 2012).

Minnite, Lorraine, Jennifer Holdaway, and Ronald Hayduk. 1999. The Political Incorporation of Immigrants in New York. Paper presented at the Annual Meeting of the American Political Science Association, Atlanta, Georgia.

Morehouse, Maggi. 2000. *Fighting in the Jim Crow Army: Black Men and Women Remember World War II.* Lanham, Maryland: Rowman and Littlefield.

Morton, John, Director US ICE. 2011. "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens," June 17, 2011 (Policy No. 10075.1, FEA No. 306-112-0026). Available www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf (Accessed June 20, 2012).

Moskos, Charles C. 1977. "The All-Volunteer Military: Calling, Profession, or Occupation?" *Parameters* 7: 2 - 9.

Moskos, Charles C. 1978. The Emergent Military: Calling, Profession, or Occupation? In *The Changing World of the American Military*.Ed. F. D. Margiotta, 199 - 206. Boulder, Colorado: Westview Press.

Moskos, Charles C. 1986. "Institutional/Occupational Trends in Armed Forces: An Update," *Armed Forces and Society* 12(3): 377 - 82.

Moskos, Charles C. 2001. "What Ails the All-Volunteer Force: An Institutional Perspective," *Parameters*, US Army War College Quarterly 3:2 (Summer 2001): 29-48.

Moskos, Charles C. 2002. "Reviving the Citizen-Soldier," *Public Interest* 147 (spring): 76-78.

Moskos, Charles C., and John Butler. 1996. *All that We Can Be: Black Leadership and Racial Integration the Army Way,* New York: Basic Books.

Moskos, Charles C. 2003. Patriotism-Lite Meets the Citizen-Soldier. In *United We Serve: National Service and the Future of American Citizenship.* eds. E. J. Dionne Jr., Kayla M. Drogosz, and Robert E. Litan, 33-42. Washington, DC: Brookings.

Mutz, Diana C. 1992. "Mass Media and the Depoliticization of Personal Experience," *American Journal of Political Science* 36:486-507.

Napolitano, Janet, Secretary of Homeland Security. 2012. "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," Memo issued by the Secretary of Homeland Security, Janet Napolitano, June 15, 2012. Available www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf (Accessed June 20, 2012).

National Lawyers Guild (NLG). 2009. Resolution of November 2009 of the Banished Veterans Committee of the National Lawyers Guild San Diego Chapter. Available http://banishedveterans.intuitwebsites.com/news.html (Accessed October 30, 2012).

Ngai, Mae M. 2004. *Impossible Subjects: Illegal Aliens and the Making of Modern America*, Princeton: Princeton University Press.

Nie, Norman H., Jane Junn, and Kenneth Stehlik-Barry. 1996. *Education and Democratic Citizenship in America,* Chicago: University of Chicago Press.

O'Neil, Helen. 2008. "Families conflicted on posthumous citizenship," *Army Times*, March 24, 2008. Available www.armytimes.com/news/2008/03/ap_citizenship_032408/ (Accessed November 14, 2012).

O'Neil, Lynn G., and Omer S. Senturk. 2004. Non Citizens in the U.S. Military, MA Thesis, Naval Postgraduate School.

O'Rourke, Kevin H., and Richard Sinnott. 2002. What Determines Attitudes Toward Protectionism? Some Cross-Country Evidence. In *Brookings Trade Forum*, eds. Susan M. Collins and Dani Rodrik. Washington, DC: Brookings Institution.

O'Sullivan, John O., and Alan M. Meckler. 1974. *The Draft and Its Enemies: A Documentary History.* Chicago: University of Illinois Press.

Page, Benjamin I., and Calvin C. Jones. 1979. "Reciprocal Effects of Policy Preferences, Party Loyalties, and the Vote," *American Political Science Review* 73:1071-89.

Parker, Christopher S. 2009. *Fighting for Democracy: Black Veterans and the Struggle against White Supremacy in the Postwar South.* Princeton: Princeton University Press.

Paludan. Philip S. 1988. *"A People's Contest": The Union and the Civil War, 1861-1865*. New York: Harper and Row.

Perry, Tony. 2012. "Immigrant Marine in Life, U.S. Citizen in Death," *LA Times*, December 7 (Available at http://articles.latimes.com/2012/dec/07/local/la-me-citizen-posthumous-20121207; Accessed February 19, 2015).

Pierson, Paul. 1993. "When Feedback Becomes Cause: Policy Feedback and Political Change," *World Politics* 45(4): 619-621.

Plascencia, Luis F.B. 2009. "Citizenship through Veteranship: Latino Migrants Defend the U.S. "Homeland,"" *Anthropology News*, May 2009, 8-9.

Preston, Julia. 2010. "Immigration Policy Aims to Help Military Families," *The New York Times*, July 31, 2010. Available www.nytimes.com/2010/08/01/us/01immig.html (Accessed June 20, 2012).

Probst, Robert. 1956. "International Demarcation of Compulsory Military Service with Special Emphasis on the Swiss-United States Situation," *Georgetown Law Journal* 45: 60-74.

Raskin, Jasmin. 1993. Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage. *University of Pennsylvania Law Review* 141: 391.

Redstae.com. 2015. "Mo Brooks Stops the Outsourcing of Military Slots to Illegal Aliens

in the NDAA," *Redstate.com*, May 16, 2015. Available http://www.redstate.com/2015/05/16/mo-brooks-stops-outsourcing-military-slots-illegal-aliens-ndaa/ (Accessed June 15, 2015).

Riesenberg, Peter. 1992. *Citizenship in the Western Tradition*. Chapel Hill: University of North Carolina Press.

Robbins, Danny. 2010. "Man who duped Army gets 6 months in prison," *Army Times*, September 19.

Robbins, Danny. 2010. "Army Enlistment Changed in Light of Faker," *Military Times*, June 2.

Robbins, Danny. 2010. "Man Faked his Way into Army as NCO," *The Navy Times*, May 23.

Roh, Charles E., and Frank K. Upham. 1972. "The Status of Aliens Under United States Draft Laws," *Harvard International Law Journal* 13: 501-17.

Ruhman, Jan. 2009. "American Combat Veterans Facing Deportation," April 7. Available http://vetspeakblog.blogspot.com/2009/04/veterans-ins-yet-more-lies.html (Accessed October 30, 2012).

Sackett, Paul and Anne Mavor, Eds. 2003. Attitudes, Aptitudes, and Aspirations of American Youth: Implications for Military Recruitment. Committee on the Youth Population and Military Recruitment, National Research Council. National Academies Press. Available http://www.nap.edu/catalog/10478.html (Accessed January 31, 2015).

Sakamoto, Gordon. 1993. "U.S.-Born Nisei were a Secret Weapon: World War II: Graying Heroes Now, These Japanese-American Volunteers Share Fascinating Spy Tales of How They Helped to Shorten the War in the Pacific," *Los Angeles Times*, October 3, 1993. Available http://articles.latimes.com/1993-10-03/local/me-41666_1_world-war-ii (Accessed August 11, 2015).

Samito, Christian G. 2009. *Becoming American under Fire: Irish Americans, African Americans, and the Politics of Citizenship during the Civil War Era.* Ithaca: Cornell University Press.

Salyer, Lucy E. 2004. "Baptism by Fire: Race, Military Service, and U.S. Citizenship Policy, 1918-1935," *Journal of American History* 91 (3): 847-876.

Schattschneider, Elmer.E. 1942. *Party Government*. New York: Holt, Reinhart, and

Winston.

Scheuring, Ian. 2012. “Daniel Inouye, Veteran and Statesman, Passes Away at 88,” *Hawaii News Now*, December 8, 2012. Available http://www.hawaiinewsnow.com/story/20366460/breaking-senator-daniel-inouye-has-passed-away-at-walter-reed-army-medical-center-his-office-confirms (Accessed August 11, 2015).

Scheve, Kenneth F., and Matthew J. Slaughter. 2001. “What Determines Individual Trade-Policy Preferences?” *Journal of International Economics* 54 (2): 267-92.

Schlimgen, Veta. 2010. "Neither Citizens Nor Aliens: Filipino 'American Nationals' in the U.S. Empire, 1900-1946," PhD dissertation, University of Oregon, 2010.

Schuck, Peter H. 1998. *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship.* Boulder, Colorado: Westview Press.

Schuck, Peter H., and Rogers M. Smith. 1985. *Citizenship without Consent: Illegal Aliens in the American Polity*, New Haven: Yale University Press.

Sears, David O., and Carolyn L. Funk. 1990. Self-interest in Americans' Political Opinions. In *Beyond Self-interest*, ed. J. J. Mansbridge, 147-70, Chicago: University of Chicago Press.

Sears, David O., and Richard R. Lau. 1983. “Inducing Apparently Self-interested Political Preferences,” *American Journal of Political Science* 27:222-52.

Sears, David O., Richard R. Lau, Tom R. Tyler, and Harris M. Allen, Jr. 1980. “Self-interest vs. Symbolic Politics in Policy Attitudes and Presidential Voting,” *American Political Science Review* 74:670-84.

Sears, David O., L. Steck, Richard R. Lau, and, and M. T. Gahart. 1983. “Attitudes of the Post-Vietnam Generation toward the Draft and American Military Policy,” Paper presented at the annual meeting of the International Society of Political Psychology, Oxford.

Segal, David R. 1986. “Measuring the Institutional/Occupational Change Thesis,” *Armed Forces and Society* 12(3): 351 - 76.

Segal, David R. and Mady W. Segal. 1983. “Change in Military Organization,” *Annual Review of Sociology* 9:151 - 170.

Segal, David R. and Mady Segal. 2004. “America’s Military Population,” *Population*

Bulletin 59(4).

Shachar, Ayelet. 2009. *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge: Cambridge University Press.

Shagin, Craig R. 2009. "Deporting Private Ryan: The less than Honorable Condition of the Noncitizen in the United States Armed Forces," *Widener Law Journal* 17: 245-316.

Simon, Richard. 1994. *Los Angeles Times*, April 6. Available http://articles.latimes.com/1994-04-06/news/mn-42779_1_marine-corps (Accessed November 12, 2012).

Simmons, Greg. 2007. "Feds Say Missing Soldiers Illegal Immigrant Wife Not Likely to be Deported," *FoxNews.com*, June 20. Available www.foxnews.com/story/0,2933,284832,00.html (Accessed October 13, 2012).

Skerry, Peter. 1993. *Mexican Americans: The Ambivalent Minority*. Cambridge: Harvard University Press.

Skocpol, Theda. 1992. *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States*. Cambridge: Belknap/Harvard University Press.

Smith, Rogers M. 1988. "The 'American Creed' and American Identity: The Limits of Liberal Citizenship in the United States," *Western Political Quarterly* 41:225-51.

Smith, Rogers M. 1997. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*, New Haven: Yale UP.

Smith, Rogers M. 2005. "The Challenges Facing American Citizenship Today," *PS* 38 (4): 679-681.

Smith, Rogers M. 2009. "Birthright Citizenship and the Fourteenth Amendment 1868 and 2008," *University of Pennsylvania Journal of Constitutional Law* 11: 1329-1335.

Somers, Margaret R. 2008. *Genealogies of Citizenship*, Cambridge: Cambridge University Press.

Sparrow, Bartholomew. 1996. *From the Outside In: World War II and the American State*. Princeton: Princeton University Press.

Spenner, Kenneth I. 1990. "Skill: Meanings, Methods, and Measures," *Work and*

Occupations 17 (4): 399-421.

Stamberg, Louis C. 1963. "International Law and the Conscription of Aliens," *Albany Law Review* 27: 11-44.

Stern, Marcus. 2010. "U.S. Shifts Approach to Deporting Illegal Immigrants," *USA Today*, September 10.

Stock, Margaret D. 2006. "Essential to the Fight: Immigrants in the Military, Five Years After 9/11," *In Focus* 5(9): 1-7. Immigration Policy Center.

Stock, Margaret D. 2008. Statement to Congress on "Immigration Problems of US Military Members, Veterans and their Families," Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, May 20, 2008.

Stock, Margaret D. 2009. Essential to the Fight: Immigrants in the Military Eight Years after 9/11," Immigration Policy Center Special Report, November 2009. Available www.immigrationpolicy.org/sites/default/files/docs/Immigrants_in_the_Military_Stock_110909.pdf (Accessed October 30, 2012).

Stock, Margaret D. 2001. Personal communication with the author. June 5, 2011.

Stock, Margaret D., and Kristan K. Exner. 2009. Immigration Issues Relating to Military Service: Practical Problems and Solutions in *Immigration and Nationality Handbook 2009-2010*, 921-37, Ed. Rizwan Hasan, American Immigration Lawyers Association, 2009.

Stock, Margaret D. 2011. Recent Developments in Military Enlistment and Naturalization Law, *Immigration Briefings* No. 11-03 (March 2011).

Texas Politics Survey. 2011. Survey conducted by the Texas Tribune and the University of Texas at Austin, Available: http://texaspolitics.laits.utexas.edu.

Tichenor, Daniel J. 2002. *Dividing Lines: The Politics of Immigration Control in America*. Princeton: Princeton University Press.

Tienda, Marta. 2002. "Demography and the Social Contract," *Demography* 39(4): 587-616.

Timmons, Susan E., and Margaret D. Stock. 2009. "Immigration Issues Faced by U.S. Service members: Challenges and Solutions," *Clearing House Review: Journal of Poverty Law and Policy* 43 (5-6), September-October 2009.

Traskey, David. 2003. "The Invisible Warrior: Illegal Immigrants in the Armed Services and the Implications of the Juan Escalante Story," *Immigration and Nationality Law Review* 24: 663-686.

Trevino, Marisa. 2009. "New bill recognizes families' military sacrifices not tied to citizenship status," *www.LatinaLista.net*, November 11. Available: www.latinalista.net/palabrafinal/2009/11.

US Citizenship and Immigration Service (USCIS). 2010. Webpage "Survivor Benefits for Relatives of Non-US Citizen Military Members.US Citizenship and Immigration Services, 2010, Survivor Benefits for Relatives of Non-US Military Members Brochure," Available www.uscis.gov/files/form/m-601.pdf (Accessed June 20, 2012).

US Citizenship and Immigration Service (USCIS). 2010. Memo: Administrative Alternatives to Comprehensive Immigration Reform. Available http://abcnews.go.com/images/Politics/memo-on-alternatives-to-comprehensive-immigration-reform.pdf (Accessed June 20, 2012).

US Department of Homeland Security. 2010. *2009 Statistical Yearbook of the Immigration and Naturalization Service*. Washington, DC

US Department of Justice. 2001. Fact Sheet: Changes to the Hmong Veterans' Naturalization Act of 2000, Immigration and Naturalization Service, December 18, 2001. www.uscis.gov (Accessed March 21, 2013).

US Government Accountability Office (GAO). 2005. Military Personnel: Reporting Additional Servicemember Demographics Could Enhance Congressional Oversight, GAO-05-952, September 2005.

US Government Accountability Office (GAO). 2010. Military Naturalizations: USCIS Generally Met Mandated Processing Deadlines, but Processing Applicants Deployed Overseas is a Challenge. GAO-10-865, Report to Congressional Committees, July 2010.

Ural, Suzanne J., ed. 2010. *Civil War Citizens: Race, Ethnicity, and Identity in America's Bloodiest Conflict*. New York: New York University Press.

VerBruggen, Robert. 2010. "The Amnesty Memo," *National Review Online*, July 29.

Virtue, Paul. 2007. *Shortfalls of the 1996 Immigration Reform Legislation*, Statement of

Former INS Commissioner Paul Virtue prepared for hearing before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the H.R. Committee on the Judiciary, 110th Cong. 33 (2007).

Walsh, Terry. 1994. "Military Service: Both a Path and a Bar to Naturalization," *Georgetown Immigration Law Journal* 8: 449-68.

Welke, Barbara. 2008. Law, Citizenship, and Personhood in the Long Nineteenth Century: The Borders of Belonging in *Cambridge History of Law in America* Eds. Michael Grossberg and Christopher L. Tomlins. Cambridge: Cambridge University Press.

Williamson, Chilton. 1960. *American Suffrage: From Property to Democracy,* Princeton: Princeton University Press.

Wong, Cara J. 2007. "Who Fights: Substitution, Commutation, and "Green Card Troops,"" *Du Bois Review* 4(1): 167-188.

Wong, Cara J. 2010. *Boundaries of Obligation in American Politics: Geographic, National, and Racial Communities*. Cambridge: Cambridge University Press.

Wong, Cara J., and Grace Cho. 2006. Jus Meritum: Citizenship for Service In *Transforming Politics, Transforming America* Eds. Taeku Lee, Karthick Ramakrishnan, Ricardo Ramirez. Charlottesville, Virginia: University of Virginia Press, 71–88.

Yates, William. 2002. Implementation of Executive Order 13269, US Department of Justice: Immigration and Naturalization Service Memo (HQISD 70/33), July 17, 2002. Available www.uscis.gov/files/pressrelease/PolMem88_Pub.pdf (Accessed June 20, 2012).